

Witness: Thomas J. Palmisano

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ENBRIDGE ENERGY COMPANY,)	
INC. AND ENBRIDGE MIDCOAST)	
ENERGY, L.P. f/k/a ENBRIDGE)	
MIDCOAST ENERGY, INC. f/k/a)	
MIDCOAST ENERGY RESOURCES,)	
INC.,)	
Plaintiffs)	
)	
vs.)	CASE NO. H-06-0657
)	
UNITED STATES OF AMERICA,)	
Defendant.)	

ORAL DEPOSITION

THOMAS J. PALMISANO

February 22, 2007

ORAL DEPOSITION OF THOMAS J. PALMISANO, produced as a witness at the instance of the Defendant and duly sworn, was taken in the above-styled and numbered cause on the 22nd day of February, 2007, from 10:00 a.m. to 2:32 p.m., before Kelly Hanna, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Vinson & Elkins LLP, First City Tower, 1001 Fannin Street, Suite 2300, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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214-220-1122

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<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR ENBRIDGE ENERGY COMPANY, INC. AND</p> <p>4 ENBRIDGE MIDCOAST ENERGY, L.P.:</p> <p>5 Mr. Karl Stern</p> <p>6 Ms. Emily W. Pipkin</p> <p>7 Vinson & Elkins LLP</p> <p>8 1001 Fannin Street, Suite 2300</p> <p>9 Houston, Texas 77002-6760</p> <p>10 Telephone: 713.758.4780</p> <p>11 Fax: 713.615.5258</p> <p>12 E-mail: epipkin@velaw.com</p> <p>13 FOR DEFENDANT:</p> <p>14 Mr. David B. Coffin</p> <p>15 Mr. Herb Linder</p> <p>16 United States Department of Justice</p> <p>17 Tax Division</p> <p>18 717 N. Harwood, Suite 400</p> <p>19 Dallas, Texas 75201</p> <p>20 Telephone: 214.880.9749</p> <p>21 Fax: 214.880.9721</p> <p>22 FOR THE WITNESS:</p> <p>23 Mr. Albert H. Turkus</p> <p>24 Mr. Brian M. Duncan</p> <p>25 Skadden, Arps, Slate, Meagher & Flom, LLP</p> <p>1440 New York Avenue, N.W.</p> <p>Washington, DC 20005-2111</p> <p>Telephone: 202.371.7000</p> <p>Fax: 202.393.5760</p> <p>E-mail: aturkus@skadden.com</p> <p>ALSO PRESENT:</p> <p>Kelly Hanna, CSR, RPR, CRR, CMRS</p> <p>Kevin G. Croke, Internal Revenue Service</p> <p>Ms. Jana Jordan, Enbridge Energy Company, Inc.</p>	<p>1 EXHIBITS (cont.)</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3</p> <p>4 No. 161 String of e-mails (PWC P1056) 54</p> <p>5</p> <p>6 No. 163 Draft letter (PWC P1092-1105) 57</p> <p>7</p> <p>8 No. 164 Draft letter (PWC P1217-1230) 61</p> <p>9</p> <p>10 No. 172 String of e-mails (001925-1927) 64</p> <p>11</p> <p>12 No. 186 String of e-mails (PWC 66</p> <p>13 P1008-1009)</p> <p>14 No. 187 String of e-mails (PWC 69</p> <p>15 P1011-1013)</p> <p>16</p> <p>17 No. 188 String of e-mails (PWC P1016, 71</p> <p>18 1015, 1013, 1020, 1057)</p> <p>19 No. 189 Memo dated 2/20/01 73</p> <p>20 (Wilcox/Whitten to Midcoast Tax</p> <p>21 Files) (PWC 398-399)</p> <p>22 No. 190 Memo dated 7/23/01 80</p> <p>23 (Chesser/Campbell to Midcoast</p> <p>24 File)(PWC P1033-1034)</p> <p>25 No. 201 Handwritten notes (PWC P1271, 82</p> <p>1274-1371)</p> <p>No. 244 Memorandum dated 9/13/00 (Teig 107</p> <p>to Lacy/Fox) (001601-1604)</p>
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<p>1 INDEX</p> <p>2 PAGE</p> <p>3 THOMAS J. PALMISANO</p> <p>4 Examination by Mr. Coffin 5</p> <p>5 Signature Page 112</p> <p>6 Court Reporter's Certificate 114</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 EXHIBIT DESCRIPTION PAGE</p> <p>10 No. 5 Letter dated 4/8/99 (Palmisano 13</p> <p>11 to Robert) (Mid 2.3-5 - 2.3-8)</p> <p>12</p> <p>13 No. 26 Facsimile Transmission Sheet 16</p> <p>14 dated 8/30/99 (PWC 117-119)</p> <p>15 No. 35 Facsimile dated 9/10/99 (PWC 22</p> <p>16 110-116)</p> <p>17</p> <p>18 No. 37 E-mail dated 23</p> <p>19 9/12/1999(PWC001-042)</p> <p>20 No. 42 Letter dated 9/30/1999 (Hoffman 24</p> <p>21 to Robert) (MID 2.1-439-442)</p> <p>22</p> <p>23 No. 50 Miscellaneous spreadsheets 24</p> <p>24 (MID2.1-1700-1703)</p> <p>25 No. 87 Memo dated 10/24/99 (Palmisano 27</p> <p>to File)(PWC P1026-1027)</p> <p>No. 115 Letter dated 11/5/99 (PWC 30</p> <p>144-149)</p> <p>No. 159 A/R Client Receipts (PWC 37</p> <p>363-388)</p> <p>No. 160 Memorandum - Draft of 12/14/99 56</p> <p>(Wilcox/Coffey to Midcoast</p> <p>File) (PWC P1112-1156)</p>	<p>1 THOMAS J. PALMISANO,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 Q. (BY MR. COFFIN) Please state your name for the</p> <p>5 record.</p> <p>6 A. Thomas Palmisano.</p> <p>7 Q. What is your current address, Mr. Palmisano?</p> <p>8 A. 17618 Glory Rose, Cypress, Texas 77429.</p> <p>9 Q. Have you ever given a deposition before?</p> <p>10 A. No, sir.</p> <p>11 Q. Okay. Let me just try to go over the ground</p> <p>12 rules a little bit. I'll ask the questions. I would</p> <p>13 appreciate if you would answer truthfully and honestly.</p> <p>14 If you try not to interrupt me, I'll try not to</p> <p>15 interrupt you.</p> <p>16 If you don't understand a question, I</p> <p>17 would ask that you ask me to restate it; and I'll try to</p> <p>18 do so. If you need a break at any time, just let me</p> <p>19 know. There might be some objections posed by your</p> <p>20 lawyer and Mr. Stern, and unless you're -- but unless</p> <p>21 your counsel instructs you not to answer it, I would ask</p> <p>22 that you answer the question, okay?</p> <p>23 A. Okay.</p> <p>24 Q. Okay? You've got to answer audibly, too.</p> <p>25 A. Sure.</p>

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<p style="text-align: right;">Page 6</p> <p>1 Q. Do you have any medical condition that would 2 prohibit you from understanding my questions today? 3 A. No. 4 Q. Are you taking any kind of medication that 5 would prohibit you from understanding my questions 6 today? 7 A. No. 8 Q. Give me your educational history beginning with 9 where you graduated from high school, please. 10 A. Stratford High School in Houston, Texas and 11 University of Texas at Austin with BBAs and PPAs in 12 accounting. 13 Q. What's the PPA? 14 A. It's a Master's in accounting. 15 Q. And what year did you graduate from University 16 of Texas? 17 A. 1993. 18 Q. Was that for your Master's degree? 19 A. Yes. 20 Q. Are you currently a certified public 21 accountant? 22 A. Yes. 23 Q. When did you pass the -- or when did you become 24 licensed as a certified public accountant? 25 A. 1994.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Can you tell me what your titles were in 2 between tax associate and partner? 3 A. Senior associate, manager, senior manager, 4 director, and then partner. 5 Q. Mr. Palmisano, have you reviewed anything to 6 prepare for this deposition? 7 A. Yes. 8 Q. What did you review? 9 A. Various documents related to the transaction 10 and copies of the representation letter, opinion letters 11 and various e-mails. 12 MR. TURKUS: Just for the record, 13 Mr. Coffin, we provided Mr. Palmisano last week after 14 you provided us with documents similar to the ones that 15 are in the binder that you provided to us. 16 MR. COFFIN: Thank you. 17 Q. (BY MR. COFFIN) How much time did you spend 18 reviewing those materials, if you recall? 19 A. A few hours. 20 Q. Are you familiar with this action between 21 Enbridge Midcoast and the United States? 22 A. Yes. 23 Q. Have you been requested by Midcoast to appear 24 at the trial of this matter? 25 A. Not that I'm aware of.</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. Any other licenses, professional licenses or 2 accreditations? 3 A. No, sir. 4 Q. How about your educational history beginning 5 with when you graduated from the University of Texas? 6 MR. TURKUS: Excuse me. You said 7 educational history. 8 Q. (BY MR. COFFIN) I'm sorry. How about your work 9 history? 10 A. I've been employed with PriceWaterhouseCoopers 11 since I graduated from the University of Texas. 12 Q. Beginning in 1993? 13 A. Correct. 14 Q. Initially with PriceWaterhouseCoopers or PWC, 15 what were your duties there when you started in 1993? 16 A. Tax associate. 17 Q. And what were your responsibilities at that 18 time? 19 A. Perform tax consulting and tax compliance 20 services for clients of PriceWaterhouseCoopers. 21 Q. Okay. Are you currently a manager? 22 A. A partner. 23 Q. Partner. When did you reach partner status 24 with PWC? 25 A. June of 2005.</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. During 1999 when you were working for PWC, who 2 did you report to within PWC? 3 A. I guess the way we're structured at PWC we 4 don't necessarily report to one individual. We report 5 to the assigned partners at -- for the various clients 6 you're responsible for. So, it would be a multiple 7 amount of partners. 8 Q. And what was your title in 1999? 9 A. Senior manager. 10 Q. You're familiar with one of PWC's clients known 11 as Midcoast Energy Resources, Inc.? 12 A. Yes. 13 Q. With regard to that client, were you providing 14 services for Midcoast? 15 A. Yes. 16 Q. And who were you reporting to, if there was a 17 particular partner that was in charge of that 18 engagement? 19 A. Bob Whitten. 20 Q. Is Mr. Whitten a tax partner? 21 A. Tax partner. 22 Q. Were you familiar with Gary Wilcox on that 23 particular engagement? 24 A. Yes. 25 Q. Were you reporting to Mr. Wilcox as well?</p>

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<p style="text-align: right;">Page 10</p> <p>1 A. Yes, during the project.</p> <p>2 Q. Do you know when PWC began its relationship</p> <p>3 with Midcoast?</p> <p>4 A. Mid-'90s we started doing tax work for</p> <p>5 Midcoast.</p> <p>6 Q. Were you doing tax work during the mid-'90s for</p> <p>7 Midcoast?</p> <p>8 A. Yes. We started providing tax services in the</p> <p>9 mid-'90s. I don't recall the exact year.</p> <p>10 Q. Okay. And were you on that engagement?</p> <p>11 A. Yes.</p> <p>12 Q. What kind of service -- tax services were you</p> <p>13 providing?</p> <p>14 A. Tax compliance and general tax advice on</p> <p>15 various matters.</p> <p>16 Q. And was PWC performing any other services for,</p> <p>17 if you recall, for Midcoast at the time other than tax?</p> <p>18 A. Initially we were purely their tax advisor.</p> <p>19 Later, few years later we started doing their external</p> <p>20 audit.</p> <p>21 Q. Doing their?</p> <p>22 A. External audit of their financial statements.</p> <p>23 Q. Do you recall who else was performing tax</p> <p>24 services -- who else from PWC was performing tax</p> <p>25 services for Midcoast other than yourself?</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Actually Midla may have come before that; but,</p> <p>2 yeah, around '97, '98 those two acquisitions occurred.</p> <p>3 Q. Do you recall if PWC performed any services for</p> <p>4 Midcoast related to the Alatenn acquisition?</p> <p>5 A. We did.</p> <p>6 Q. What kind of services?</p> <p>7 A. Assistance with the acquisition.</p> <p>8 Q. What kind of assistance?</p> <p>9 A. Just general tax, due diligence on the</p> <p>10 acquisition.</p> <p>11 Q. How would you define "due diligence"?</p> <p>12 A. Analysis of the basis.</p> <p>13 Q. Basis of?</p> <p>14 A. Tax basis of the target, understanding any --</p> <p>15 the location of the assets, the impact of those assets</p> <p>16 on Midco's current tax structure, additional compliance</p> <p>17 considerations from a federal and state perspective.</p> <p>18 Q. And that was with regard to the Alatenn</p> <p>19 acquisition?</p> <p>20 A. Both Alatenn and Midla.</p> <p>21 Q. Do you recall if those were asset purchases or</p> <p>22 stock purchases?</p> <p>23 A. I believe Alatenn was a 338H10 qualified stock</p> <p>24 purchase. Midla was a -- a 368 tax-free merger.</p> <p>25 Q. Do you recall if PriceWaterhouseCoopers issued</p>
<p style="text-align: right;">Page 11</p> <p>1 A. Myself, Bob Whitten, the engagement partner. I</p> <p>2 don't recall the -- the staff we had on the job.</p> <p>3 Q. Was there a Dennis McErlean with PWC at the</p> <p>4 time?</p> <p>5 A. Yes.</p> <p>6 Q. What was his title?</p> <p>7 A. He was a tax partner.</p> <p>8 Q. Was he engaged on the Midcoast -- for the</p> <p>9 Midcoast work?</p> <p>10 A. No. He was -- he was not involved in the</p> <p>11 day-to-day.</p> <p>12 Q. Since the mid-'90s, do you recall if Midcoast</p> <p>13 had acquired any companies or businesses in between the</p> <p>14 mid-'90s and 1999?</p> <p>15 A. Yes, they -- I don't recall every acquisition,</p> <p>16 but there were acquisitions of Alatenn, which was, I</p> <p>17 believe, in 1998.</p> <p>18 Q. Could you spell that for me, please?</p> <p>19 A. A-L-A-T-E-N-N. I'm not exactly -- I'm not</p> <p>20 positive that was the name of the company, and then</p> <p>21 Midla Gas was acquired, I think within a two-year period</p> <p>22 afterwards.</p> <p>23 Q. So, Alatenn 1998?</p> <p>24 A. Approximately. I'm not certain.</p> <p>25 Q. And then Midla Gas, M-I-D-L-A, Midla Gas?</p>	<p style="text-align: right;">Page 13</p> <p>1 any kind of a tax opinion for each of those</p> <p>2 acquisitions?</p> <p>3 A. I don't recall ever issuing an opinion on</p> <p>4 those.</p> <p>5 Q. And I assume you performed work with regard to</p> <p>6 both of those acquisitions?</p> <p>7 A. Yes, sir.</p> <p>8 MR. TURKUS: Objection to the form of the</p> <p>9 question.</p> <p>10 Q. (BY MR. COFFIN) Okay. There's a binder in</p> <p>11 front of you with documents. We are going to go through</p> <p>12 some of those today. If you would look at Government</p> <p>13 Exhibit No. 5, what is that document, Mr. Palmisano?</p> <p>14 A. It appears to be the engagement letter to</p> <p>15 provide tax-compliant services for the 1998 federal and</p> <p>16 state tax filings.</p> <p>17 Q. Is that your signature at the bottom of the</p> <p>18 first page?</p> <p>19 A. It appears to be so.</p> <p>20 Q. Turn to the second page of the document. The</p> <p>21 last paragraph, do you see that about the "Specific</p> <p>22 projects and consultations will be detailed in a</p> <p>23 separate engagement letter should the need arise at</p> <p>24 65 percent of our standard hourly rates"?</p> <p>25 A. Uh-huh.</p>

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<p style="text-align: right;">Page 14</p> <p>1 MR. TURKUS: You have to say "yes" for the 2 record. 3 A. Yes. 4 Q. (BY MR. COFFIN) Can you tell me why or how the 5 65 percent was determined? 6 MR. TURKUS: Objection to the form of the 7 question. Objection, lack of foundation. 8 A. 65 percent is -- is a general practice of the 9 rates that we were charging clients at that time for 10 that type of work. 11 Q. (BY MR. COFFIN) Mr. Palmisano, during 1999 did 12 you become aware that Midcoast was bidding on the 13 purchase of the stock in the Bishop Group Limited? 14 A. Yes. 15 Q. Do you recall how you became aware of that? 16 A. I don't recall the specific time, but I believe 17 I would have been informed of the proposed acquisition 18 by Richard Robert. 19 Q. Was he the CFO of Midcoast? 20 A. Yes. 21 Q. And do you recall if Mr. Robert would have 22 requested PWC services at that time? 23 A. Yes, yes. 24 Q. What kind of services was he requesting? 25 A. Midcoast did not have an internal tax</p>	<p style="text-align: right;">Page 16</p> <p>1 implications to Midcoast's existing structure, state 2 liability, et cetera. 3 Q. (BY MR. COFFIN) And did you perform those 4 services? 5 A. Yes. 6 Q. In performing your services did you become 7 familiar with the tax basis and the assets of the Bishop 8 Group Limited? 9 A. Yes. 10 Q. Turn to Government Exhibit 26, please. 11 Mr. Palmisano, have you seen this document 12 before? 13 A. Yes, I have. 14 MR. TURKUS: Again, do you mean prior to 15 last week? 16 Q. (BY MR. COFFIN) Yes. I'm sorry. Prior to last 17 week when you were provided the documents by counsel. 18 A. Yes, yes, I've seen this prior to last week. 19 Q. Who is Craig Hoffman? 20 A. He was an associate for Fortrend. I'm not sure 21 of his specific title. 22 Q. And who was Fortrend? 23 A. Fortrend is an investment banking organization. 24 Q. Were you familiar with Fortrend back in August 25 of 1999?</p>
<p style="text-align: right;">Page 15</p> <p>1 department. So, the majority, if not all the tax 2 matters generally were handled by 3 PriceWaterhouseCoopers. 4 Q. So, again, what kind of services was he 5 requesting that PWC perform? 6 A. With respect to the acquisition? 7 Q. Yes, sir. 8 A. General due diligence on the acquisition. 9 Q. And does the general due diligence have the 10 same meaning you gave me earlier? 11 A. Yes, sir. 12 Q. Did Mr. Robert contact you or would he have 13 contacted Mr. Whitten? 14 MR. TURKUS: Objection to the form of the 15 question. 16 A. I don't recall who he contacted initially. 17 Q. (BY MR. COFFIN) Okay. Initially, what would 18 have been your role in the engagement? 19 MR. TURKUS: Objection to the form of the 20 question. Do you want to know what his role was or what 21 his role would have been? 22 MR. COFFIN: What his role was in the 23 engagement initially. 24 A. Assist -- assist with the analysis of tax -- 25 tax attributes of the target, tax basis of the target,</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Yes. 2 Q. Do you recall receiving this facsimile around 3 August 30 of 1999? 4 A. Yes, I do. 5 Q. Were you familiar with Fortrend prior to 6 August 30, 1999? 7 A. I don't recall the exact date, but prior to 8 this. 9 Q. And do you recall who told you about Fortrend? 10 MR. TURKUS: Objection to the form of the 11 question. Do you mean who first told him about 12 Fortrend? 13 MR. COFFIN: Yes. 14 A. I don't recall who first introduced us to 15 Fortrend. 16 Q. (BY MR. COFFIN) When you say "us," do you mean 17 PWC? 18 A. PWC. 19 Q. Who was Bruce Snyder? 20 A. Bruce was a tax advisor for the Bishop Group 21 with Ernst & Young. 22 Q. Did you know if Mr. Snyder had heard of 23 Fortrend prior to this facsimile date? 24 A. No, I don't recall whether they were aware or 25 knew of Fortrend.</p>

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<p style="text-align: right;">Page 18</p> <p>1 Q. The facsimile references a conversation that 2 Mr. Hoffman had with Bruce. Do you see that in the 3 first sentence under "Comments"?</p> <p>4 A. Yes.</p> <p>5 Q. Were you involved in that conversation?</p> <p>6 MR. TURKUS: Objection to the form of the 7 question. Objection, lack of foundation.</p> <p>8 A. I don't recall whether I was a part of that or 9 not.</p> <p>10 Q. (BY MR. COFFIN) Did you participate or do you 11 recall participating in any conversations with 12 Mr. Hoffman or Mr. Snyder --</p> <p>13 MR. TURKUS: At any time?</p> <p>14 Q. (BY MR. COFFIN) -- on the telephone? At any 15 time.</p> <p>16 A. I don't recall specific conversations, but -- 17 but I -- I believe I was on some -- some calls with 18 them, yes, that's correct.</p> <p>19 Q. Do you recall the subject matter of those 20 calls?</p> <p>21 A. Not specifically, but it would have certainly 22 had to do with the acquisition.</p> <p>23 Q. What was Mr. Hoffman's involvement in those 24 calls?</p> <p>25 A. Well, Mr. Hoffman was the key person for</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I -- he didn't give me any other impression.</p> <p>2 Q. (BY MR. COFFIN) Do you recall back in August of 3 1999 what all you knew about Fortrend?</p> <p>4 MR. TURKUS: Objection to the form of the 5 question.</p> <p>6 A. Could you be a little more specific?</p> <p>7 Q. (BY MR. COFFIN) Sure. Had you ever heard that 8 Fortrend was a promoter of tax shelter transactions back 9 in August of 1999?</p> <p>10 MR. STERN: Objection, form.</p> <p>11 MR. TURKUS: Objection to the form of the 12 question.</p> <p>13 A. I knew them as an investment banker 14 specializing in structuring and managing transactions.</p> <p>15 Q. (BY MR. COFFIN) You said you met with 16 Mr. Hoffman personally, and I didn't catch -- did you 17 tell me how many times you met with him personally?</p> <p>18 A. I don't recall how many times.</p> <p>19 Q. Was it more than once?</p> <p>20 A. It would have been more than once.</p> <p>21 Q. Do you recall if anybody from Midcoast was with 22 you during your meetings with -- personal meetings with 23 Mr. Hoffman?</p> <p>24 A. I believe so, but I don't recall who might have 25 been there.</p>
<p style="text-align: right;">Page 19</p> <p>1 Fortrend with respect to Fortrend's acquisition of 2 Bishop. He was our primary contact with Fortrend.</p> <p>3 Q. What was Fortrend's involvement then in the 4 acquisition?</p> <p>5 A. Midcoast acquired the KPC partnership interest 6 from Fortrend.</p> <p>7 Q. Do you know if PWC had worked with Fortrend on 8 any other transactions prior to August of 1999?</p> <p>9 A. I'm not aware of any transactions that PWC was 10 involved with with Fortrend.</p> <p>11 Q. Did you ever meet with anybody from Fortrend 12 personally?</p> <p>13 A. Yes, Craig Hoffman.</p> <p>14 Q. Did you form any impressions of Mr. Hoffman?</p> <p>15 MR. TURKUS: Objection to the form of the 16 question. What do you mean by "impressions"?</p> <p>17 Q. (BY MR. COFFIN) Professional.</p> <p>18 A. I don't --</p> <p>19 MR. TURKUS: Objection to the form of the 20 question.</p> <p>21 A. I don't understand the question.</p> <p>22 Q. (BY MR. COFFIN) Did you believe him to be a 23 truthful and upstanding individual?</p> <p>24 MR. TURKUS: Objection to the form of the 25 question.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. On Government Exhibit 26 there are a couple of 2 pages attached there. Do you recall seeing these two 3 pages, PWC118 and PWC119 back in 1999?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall if Fortrend ever provided any 6 other documents to PWC which would have described what 7 Fortrend did?</p> <p>8 A. Could you be clear on exactly what you mean by 9 what they did?</p> <p>10 Q. Okay. There are a couple of documents here 11 that kind of gives their -- Fortrend's background.</p> <p>12 MR. TURKUS: Couple of pages you mean?</p> <p>13 Q. (BY MR. COFFIN) Couple of pages, yes. Did they 14 ever provide any other documents that described the 15 things that Fortrend did, their investment banking work?</p> <p>16 A. I don't -- I don't recall any other documents 17 provided.</p> <p>18 Q. Did Fortrend ever provide any kind of 19 prospectus or anything like that to PWC?</p> <p>20 MR. TURKUS: Objection to the form of the 21 question.</p> <p>22 A. Prospectus regarding?</p> <p>23 Q. (BY MR. COFFIN) Regarding how they could 24 facilitate the purchase of assets from Bishop Group 25 Limited?</p>

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<p style="text-align: right;">Page 22</p> <p>1 MR. STERN: Objection, form. 2 A. I don't recall seeing anything like that. 3 Q. (BY MR. COFFIN) Turn to Government Exhibit 35, 4 please. Mr. Palmisano, have you seen this document 5 before -- before Friday of last week or whenever it was 6 it was provided to you by counsel? 7 A. Thirty-five? 8 Q. Yes, sir. 9 MR. TURKUS: Just for the record, I think 10 we got it on Friday from you and sent it to 11 Mr. Palmisano. So, he received it on Monday of this 12 week. 13 MR. COFFIN: Okay. 14 A. Yes, I recall receiving this. 15 Q. (BY MR. COFFIN) Okay. And it's a facsimile 16 from Bryan Cave; is that correct? 17 A. Appears to be a fax from Bryan Cave. 18 Q. And it's from James P. Pryde; is that right? 19 MR. TURKUS: Document speaks for itself. 20 Objection. 21 Q. (BY MR. COFFIN) Who did Mr. Pryde represent? 22 A. I believe he represented Bishop Group. 23 Q. Okay. And the document that's attached appears 24 to be a draft Mutual Confidentiality Agreement between 25 Fortrend and The Bishop Group Limited.</p>	<p style="text-align: right;">Page 24</p> <p>1 Purchase Agreement between Mr. Langley and Fortrend 2 International? 3 MR. TURKUS: Objection, lack of 4 foundation. 5 A. I don't recall why they would have sent this to 6 me. 7 Q. (BY MR. COFFIN) Turn to Government Exhibit 42, 8 please. 9 A. (Witness complies.) 10 Q. Could you look at that document, Mr. Palmisano, 11 and tell me if you've ever seen this document before, 12 please? 13 A. Forty-two? 14 Q. Yes, sir. 15 A. Could you repeat your question again? 16 Q. Do you recall ever seeing this document before? 17 A. Before it was provided by counsel? 18 Q. Yes. 19 A. I don't recall seeing this. 20 Q. Turn to Government Exhibit 50, please. 21 A. (Witness complies.) 22 Q. If you would turn to the last page of this 23 exhibit, Mr. Palmisano, the last page of this exhibit? 24 A. Fifty? 25 Q. Uh-huh. There is a spreadsheet at the top</p>
<p style="text-align: right;">Page 23</p> <p>1 My question is: Why would Bryan Cave and 2 Mr. Pryde be faxing this document to you, Mr. Palmisano? 3 MR. TURKUS: Objection to the form of the 4 question. Objection, lack of foundation. 5 A. I don't recall. 6 Q. (BY MR. COFFIN) Okay. Did PWC represent Craig 7 Hoffman and the Fortrend group? 8 A. No. 9 Q. Turn the page to Government Exhibit 37, please. 10 Turn to the next Exhibit 37. 11 A. Thirty-six or 37? 12 Q. Thirty-seven. Just flip on over to 37. 13 A. (Witness complies.) 14 Q. This appears to be an e-mail from Becky Davis 15 to you, Mr. Palmisano, dated September 12, 1999. 16 Attached to it is -- appears to be a draft Stock 17 Purchase Agreement by and between Fortrend 18 International, LLC and Mr. Langley. 19 Do you recall receiving this document, 20 Mr. Palmisano, by -- by e-mail? 21 A. I don't recall specifically receiving it, but 22 it appears that it went to me via e-mail based on this 23 document. 24 Q. Okay. My question, again, is: Why were you 25 receiving a Stock Purchase Agreement or a draft Stock</p>	<p style="text-align: right;">Page 25</p> <p>1 titled "Break-Even Alternatives." Do you see that? 2 Have you ever seen this document before? 3 A. I believe this was provided by counsel on 4 Monday. 5 Q. Just recently? 6 A. Recently. 7 Q. Prior to that, do you recall seeing it? I'll 8 ask you to focus on the last page. I'll give you the 9 DOJ Bates No. 18090. 10 A. I don't recall seeing this. 11 Q. Okay. In the bottom right-hand corner there's 12 a calculation there that says "Fortrend Cost"? 13 A. Uh-huh, yes. 14 Q. Do you have any idea what that calculation is? 15 MR. TURKUS: Are you asking him to 16 speculate as to what it is? 17 MR. COFFIN: Sure. 18 A. It appears to be calculating the tax step-up on 19 the calculation. 20 Q. (BY MR. COFFIN) Tax step-up of? 21 A. In the purchase price of the assets in excess 22 of the historical tax basis. 23 Q. And then the "Agreed Rate," what was that, if 24 you recall? 25 MR. TURKUS: Objection to the form of the</p>

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<p style="text-align: right;">Page 26</p> <p>1 question. Objection, lack of foundation. He said he 2 doesn't recall ever seeing it before. Are you asking 3 him again to speculate as to what it might be? 4 MR. COFFIN: Sure. 5 MR. TURKUS: Then please ask the question 6 that way. 7 Q. (BY MR. COFFIN) The 5 percent -- 8 A. Speculate what the -- 9 Q. Sure. Any idea what the 5 percent is? 10 A. Well, the \$6 million appears to be 11 approximately the -- the profit on the sale from 12 Fortrend. 13 Q. What do you mean "the profit"? 14 A. Well, it's the -- the excess of the purchase 15 price of assets sold to Midcoast over -- over their 16 purchase price of the stock. 17 Q. And then what was -- how was the 5 percent 18 determined, if you recall? 19 MR. TURKUS: Are you asking him how this 20 number was put on this -- why this number was put on 21 this piece of paper? Or are you asking more generally 22 what he knows about a 5 percent number? 23 MR. COFFIN: I'll ask him more generally. 24 Q. (BY MR. COFFIN) What do you know about the 25 5 percent?</p>	<p style="text-align: right;">Page 28</p> <p>1 question. 2 A. I don't recall specifically who would have 3 asked me to draft it. 4 Q. (BY MR. COFFIN) Do you recall why you drafted 5 the memo? 6 A. I believe it was to lay out the -- the steps to 7 the formation of the Butcher Interest Partnership. 8 Q. What was the Butcher Interest Partnership? 9 A. I don't recall specifically, but I believe it 10 was an overriding royalty interest in one of the 11 pipelines, the pipeline assets of KPC or related 12 entities. 13 Q. Well, that's the interest, right? 14 A. Correct. The Butcher Interest. 15 Q. Okay. What was the partnership component of 16 that? 17 MR. TURKUS: Objection to the form of the 18 question. 19 Q. (BY MR. COFFIN) My question was: What was the 20 Butcher Interest Partnership? 21 MR. TURKUS: Objection to the form of the 22 question. 23 A. I apologize. I thought you asked me what the 24 Butcher Interest was. The Butcher Interest Partnership 25 was a partnership formed by a Midcoast entity and</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. STERN: Objection, form. 2 A. Generally the 5 percent, or generally -- 3 Q. (BY MR. COFFIN) The 5 percent. 4 A. I -- I believe that is the customary profit 5 that Fortrend looks to get on the purchase and sale of 6 assets. Customary practice, I believe, was 5 to 7 7 percent, based on conversations with Craig Hoffman. 8 Q. Okay. Do you know how it was determined 9 whether 5 percent would be used or 7 percent or anything 10 in between? 11 A. I don't recall. 12 MR. TURKUS: Objection, form. 13 MR. STERN: Objection, lack of foundation. 14 Q. (BY MR. COFFIN) Turn to Government 87, please. 15 A. (Witness complies.) 16 MR. STERN: Eighty-seven? 17 MR. COFFIN: Eighty-seven. 18 Q. (BY MR. COFFIN) Have you seen this document 19 before, Mr. Palmisano? 20 A. Yes, I have. 21 Q. Did you draft the memorandum? 22 A. It appears from the document that I drafted it. 23 Q. Do you recall who requested that you draft that 24 memorandum? 25 MR. TURKUS: Objection to the form of the</p>	<p style="text-align: right;">Page 29</p> <p>1 Butcher Group Limited to hold the Butcher Interests. 2 Q. (BY MR. COFFIN) The second bullet point in your 3 memo shows -- does it show the fair market value 4 \$6.5 million, does that reference the fair market value 5 of the Butcher Interest? 6 MR. TURKUS: Are you asking him what the 7 document says? 8 Q. (BY MR. COFFIN) Yeah, I'm just wondering if 9 that's what the FMV \$6.5 million refer to the fair 10 market value that Butcher has. 11 A. Yes, I believe that is what the document is 12 referring to. 13 Q. Do you recall how the fair market value of the 14 Butcher Interest was determined? 15 A. Not specifically, other than just an 16 agreed-upon value by the two parties. 17 Q. The two parties being? 18 A. Bishop Group and the -- the Midcoast affiliate 19 that was the other partner to the partnership. 20 Q. And the partnership you said was between -- the 21 two partners of the partnership were Bishop Group and 22 Midcoast? 23 MR. TURKUS: Objection to the form of the 24 question. Asked and answered. That's not what the 25 witness said.</p>

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<p style="text-align: right;">Page 30</p> <p>1 MR. COFFIN: I'm just asking. 2 MR. TURKUS: He already testified. He 3 answered that question very clearly the first time you 4 asked it. 5 MR. COFFIN: Well, I can ask him again. 6 MR. TURKUS: You have to listen to the 7 answers, so you don't have to ask him again. 8 MR. COFFIN: I'm trying to. All right. 9 Q. (BY MR. COFFIN) Who did you say the partners 10 were to the partnership? 11 MR. TURKUS: Objection, asked and 12 answered. 13 A. According to the document it was Bishop Group 14 Limited and Midcoast Holding. 15 Q. (BY MR. COFFIN) Do you have an independent 16 recollection of who the partnership partners were? 17 A. I don't recall the specific partners. 18 Q. Turn to Government Exhibit 115, please. 115. 19 A. 115? 20 Q. Uh-huh. Mr. Palmisano, have you seen this 21 document before, Government Exhibit 115? 22 MR. TURKUS: Prior to last Monday? 23 Q. (BY MR. COFFIN) Prior to last Monday. 24 A. Government 115? 25 Q. Yes, sir.</p>	<p style="text-align: right;">Page 32</p> <p>1 discussions about that particular phrase? 2 A. That phrase? 3 Q. Yeah, that phrase back in 1999? 4 A. Yes, I recall having some discussions about 5 generally that. 6 Q. What do you recall about your discussions? 7 A. Could you be a little more specific? 8 Q. Who were your discussions with? 9 A. In terms of -- I -- I recall general 10 discussions about the way to structure the fees with the 11 partners involved, Gary and Bob. But I don't recall how 12 and why we sort of landed where we did in terms of 13 what's on the document. 14 Q. The second sentence says "In such case, the 15 fees may be paid out of the sales proceeds received by 16 the sellers from Midcoast in the above-described 17 transaction in accordance with usual and customary 18 practices." Do you remember having discussions with 19 regard to who would pay the fees back in November of 20 '99? 21 MR. TURKUS: Objection. Discussions with 22 whom? 23 MR. COFFIN: Anyone. 24 A. Yes. I think it was discussed -- two 25 alternatives were discussed, either that payment of</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Yes, I have. 2 Q. Do you recall who signed the document on behalf 3 of PriceWaterhouseCoopers? 4 A. No, I don't. 5 Q. Could it have been you at the time? 6 A. No. 7 Q. You were a senior manager at the time? 8 A. Correct. 9 Q. Do you recall who drafted the agreement? 10 A. The document 144 -- or Exhibit 115? 11 Q. Yes, sir. 12 A. No, I don't recall the specific drafters of the 13 agreement. 14 Q. Would you have assisted on the preparation of 15 this agreement at all? 16 A. Yes, I would have. 17 Q. On PWC145, which is the signature page, in the 18 second paragraph, first line references "extraordinary 19 value." Do you recall what that term was meant to be 20 back in November of '99? 21 MR. TURKUS: Objection to the form of the 22 question. Objection, lack of foundation. 23 A. I don't recall why we worded this paragraph the 24 way it's worded in the document. 25 Q. (BY MR. COFFIN) Do you recall having any</p>	<p style="text-align: right;">Page 33</p> <p>1 PriceWaterhouseCoopers fees would come out of 2 consideration paid by Midcoast or -- or directly to 3 Midcoast outside of consideration. 4 Q. (BY MR. COFFIN) Directly from Midcoast? 5 A. From Midcoast, yes. 6 Q. Do you recall -- did somebody make a 7 determination of how those fees would be paid based on 8 those two alternatives? 9 MR. TURKUS: Objection to the form of the 10 question. At what point in time? 11 MR. COFFIN: Any time. 12 A. Well, according to the document, it was at 13 Midcoast's discretion. 14 Q. (BY MR. COFFIN) According to the document, 15 Midcoast would have to agree that there was 16 extraordinary value brought by PWC before payment would 17 be made? 18 A. Correct. 19 Q. Do you recall if Midcoast ever made that 20 determination? 21 A. I believe the fees were paid out of Midcoast 22 consideration for the acquisition in which case there 23 was determined to be extraordinary value by Midcoast. 24 Q. Do you recall who from Midcoast made that 25 determination?</p>

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<p style="text-align: right;">Page 34</p> <p>1 MR. TURKUS: Objection, lack of 2 foundation. 3 A. Specifically, no, I don't know who specifically 4 made the call; but it would have been -- assuming 5 Richard Robert, who is the CFO and our primary contact 6 in charge of taxes would have been involved in that 7 decision. 8 Q. (BY MR. COFFIN) Do you recall receiving 9 anything in writing from Mr. Robert or from Midcoast 10 that would indicate or authorize payment for this 11 extraordinary value? 12 A. I don't recall the form of the communication to 13 the seller, Fortrend. 14 Q. Do you know how PWC's fees were calculated? 15 A. The customary practice of Fortrend was to -- 16 the actual -- I apologize. The actual fees we received? 17 Q. Uh-huh. 18 A. The customary practice of Fortrend as a seller 19 would be to pay the fee as a percentage of the -- the 20 step-up involved. So, I believe that was a component of 21 the fee that Midcoast paid to -- to PWC at closing. 22 Q. Do you recall if PWC sent an invoice to 23 Midcoast for the fees? 24 A. I don't recall the invoice, but I would assume 25 an invoice was sent so that we could be paid.</p>	<p style="text-align: right;">Page 36</p> <p>1 letter be drafted? 2 A. There's no set time we would have drafted a '99 3 engagement letter. So, we drafted a specific engagement 4 letter for this transaction, which is the -- what 5 exhibit was that? 155? 6 Q. 115. 7 A. 115? 8 Q. Yes. Government 115 also represents that PWC 9 would provide a tax opinion. Do you recall who from 10 Midcoast requested the tax opinion letter? 11 MR. TURKUS: Objection to the form of the 12 question. Objection, lack of foundation. 13 A. Richard Robert. 14 Q. (BY MR. COFFIN) Do you recall when Mr. -- 15 A. I don't recall. 16 Q. Let me finish the question. Do you recall when 17 Mr. Robert would have requested the tax opinion letter? 18 A. No, I don't recall. 19 Q. Who from PWC dealt with Mr. Robert on a 20 day-to-day basis or more frequently than the others at 21 PWC? 22 MR. TURKUS: Objection to the form of the 23 question. 24 A. I would have interacted with him on a 25 day-to-day basis as the senior manager on the</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. If you recall back on Government Exhibit 5 when 2 we looked at the provision on the last paragraph of the 3 second page where it said "Specific projects and 4 consultations will be detailed in a separate engagement 5 letter should the need arise at 65 percent of our 6 standard hourly rates" -- 7 A. Uh-huh. 8 Q. -- and you said, I think, that was customary at 9 the time? 10 A. Correct. 11 Q. So my question is: Why wouldn't PWC just bill 12 Midcoast for 65 percent of it standard hourly rates? 13 MR. TURKUS: Object to the form of the 14 question. You earlier said these were the '98 tax 15 returns they were preparing. That's what he identified 16 Exhibit 5 as. 17 MR. COFFIN: Okay. Well, he can tell me 18 that, if that's what it was. 19 MR. TURKUS: He's already told you that. 20 A. Correct. This engagement letter is for the 21 1998 tax period. So, the KPC acquisition was in '99. 22 So, it's -- and it's customary that we issue new 23 engagement letters every year. So, this wouldn't be 24 applicable to the transaction for '99. 25 Q. (BY MR. COFFIN) When would the '99 engagement</p>	<p style="text-align: right;">Page 37</p> <p>1 engagement. 2 Q. (BY MR. COFFIN) Go to Government Exhibit 159, 3 please. 4 MR. TURKUS: 159? 5 MR. COFFIN: Yes, 159. 6 MR. TURKUS: We don't have it in our 7 binder. Maybe we do. Ours are in the wrong order. 8 No, we don't. It's not in your binder, is 9 it? 10 THE WITNESS: No. 11 MR. TURKUS: It's not in the witness' 12 binder either. 13 MR. LINDER: You can have my copy. 14 MR. TURKUS: We need two copies. Do you 15 have another copy? 16 MR. STERN: I don't have a copy. 17 MR. TURKUS: The witness has got to look 18 at it. I need to be looking at it, too. 19 MR. STERN: Why don't we take a break, and 20 we'll make a copy for you. 21 (Recess taken from 11:08 to 11:17.) 22 Q. (BY MR. COFFIN) Turn back to -- or turn to 23 Government Exhibit 159, please, Mr. Palmisano. Do you 24 recognize this document? 25 MR. TURKUS: Do you mean does he recognize</p>

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<p>1 this specific document or does he know what this 2 document is, kind of a type? 3 Q. (BY MR. COFFIN) Can you tell me what the 4 document is, please? 5 A. Appears to be our accounting, 6 PriceWaterhouseCoopers' accounting printout from their 7 accounting system. 8 Q. Is this a document that you would look at in 9 your normal course of duties at PriceWaterhouseCoopers? 10 A. Yes. 11 Q. And why would you look at it? 12 MR. TURKUS: Do you mean this specific 13 document or time records like this generally? 14 MR. COFFIN: In general. Sorry. 15 Q. (BY MR. COFFIN) In general. 16 A. Yes, in general. 17 Q. Do you recall if you've looked at this document 18 before, this specific one? 19 A. Yes. This -- well, the top page of Exhibit 159 20 is familiar. 21 Q. Have you looked at -- I'm just trying to figure 22 out -- there are some notations there. Do you know 23 whose those notations are? 24 A. On which specific page? 25 Q. Any of the pages. There's numbers to the right</p>	<p>1 A. Oh, I see. 2 Q. (BY MR. COFFIN) Okay. There are some entries 3 that are made there, it appears by -- or for 4 Mr. Palmisano, which would be you; is that correct? 5 A. Either -- either myself or my executive 6 assistant would have input this data. 7 Q. Did she input that data at your instruction? 8 A. I don't recall. 9 Q. Was it typical for her to input data at your 10 instruction? 11 A. It would vary. It's not -- either I would 12 input my time or my executive assistant. 13 Q. Okay. But my question is: If she would have 14 done it, would it have been at your instruction? 15 A. Yes. 16 Q. Okay. 17 A. That's correct. 18 Q. Thank you. There are some entries there for 19 August 26 of '99. Do you see that? 20 A. Yes. 21 Q. With your name. And I want to look at the 22 second entry dated August 26 of '99 where it says 23 Palmisano, description: Midcoast Bishop, looks like the 24 number of hours, four. Below that is a comment section. 25 A. Uh-huh. Yes.</p>
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<p>1 of the hours. 2 A. The notations? 3 Q. Yes, the handwritten -- 4 A. What's the specific question? 5 Q. Do you know whose handwriting that is? 6 A. I -- it doesn't look familiar to me. 7 Q. And do you know what the purpose of this 8 document is? 9 A. This is a printout of the time with respect to 10 the engagement code in the top left-hand corner. 11 Q. Okay. What do you mean? Let me ask you: Do 12 you make -- do you personally make entries into this 13 document? 14 A. Yes. This is a -- well, not into the document 15 itself, but this is a printout from our 16 PriceWaterhouseCoopers' time management system. 17 Q. Okay. It summarizes the entries that are made 18 by the PriceWaterhouseCoopers employees? 19 A. It collects the entries. 20 Q. All right. Turn to PWC 369, please. 21 A. 369? 22 Q. Yeah. PWC 369, bottom left-hand corner. I'm 23 sorry. 24 MR. TURKUS: Let me take it out for you. 25 It might be a little easier. He means the page number.</p>	<p>1 Q. Who keys in or inputs the comment section to 2 those entries? 3 A. Either myself or my executive assistant at the 4 time. 5 Q. Can you read what the comment is under that 6 second entry August 26 of 1999? 7 MR. TURKUS: To himself or out loud? 8 Q. (BY MR. COFFIN) Out loud, please. 9 MR. TURKUS: Objection. Document speaks 10 for itself. 11 A. The second line? 12 Q. (BY MR. COFFIN) The "Comments" section. 13 A. The entire section or just the second line? 14 Q. The -- 15 A. The "cc with Dennis" -- 16 Q. Right. Just read from there, please. 17 A. -- "M, David Miller, Craig Hoffman, Bruce 18 Snyder, Steve Corbs, re: Proposed acqu and midco." 19 Q. Okay. Do you recall who Dennis M. would be or 20 who was Dennis M.? 21 A. Would likely to have been Dennis McErlean. 22 Q. Okay. Who would David Miller be? 23 A. David Miller was a tax partner from our -- I 24 believe our Dallas office. 25 Q. And then Craig Hoffman you mentioned was from</p>

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<p style="text-align: right;">Page 42</p> <p>1 Fortrend; is that right?</p> <p>2 A. Correct.</p> <p>3 Q. Bruce Snyder was with Ernst & Young?</p> <p>4 A. Correct.</p> <p>5 Q. Who is Steve Corbs?</p> <p>6 A. I believe he was with KPC.</p> <p>7 Q. Kansas Pipeline Company?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And you reference there a proposed -- is</p> <p>10 that acquisition? Would that be acquisition?</p> <p>11 A. It's "acqu." I would assume it's probably</p> <p>12 acquisition, but I don't recall specifically.</p> <p>13 Q. Okay. And "Midco," what's -- what is "Midco"?</p> <p>14 A. What is Midco? I don't recall if I was</p> <p>15 referring to Midcoast abbreviated or -- or maybe Midco</p> <p>16 transaction potentially.</p> <p>17 Q. Okay. What's your understanding of what a</p> <p>18 Midco transaction is?</p> <p>19 MR. TURKUS: Sitting here today or what it</p> <p>20 meant back then?</p> <p>21 Q. (BY MR. COFFIN) Sitting here today.</p> <p>22 A. Well, my understanding of a Midco is a</p> <p>23 situation that where a -- it's a three-party transaction</p> <p>24 where the first seller sells stock to a buyer, and the</p> <p>25 buyer then sells assets to a second seller.</p>	<p style="text-align: right;">Page 44</p> <p>1 the assets.</p> <p>2 Q. Isn't the purpose of the transaction to shelter</p> <p>3 gain that the ultimate buyer would receive from</p> <p>4 purchasing --</p> <p>5 A. Gain from the buyer?</p> <p>6 MR. TURKUS: Let him finish the question.</p> <p>7 MR. COFFIN: Let me strike that question.</p> <p>8 Q. (BY MR. COFFIN) Is there a tax benefit to the</p> <p>9 ultimate buyer of the assets?</p> <p>10 MR. TURKUS: Objection. Asked and</p> <p>11 answered.</p> <p>12 A. The ultimate buyer receives cost basis in the</p> <p>13 assets purchased.</p> <p>14 Q. (BY MR. COFFIN) And the first buyer of the</p> <p>15 stock would have some gain resulting from its purchase</p> <p>16 of the stock in which the assets came over on a</p> <p>17 carryover basis, correct?</p> <p>18 MR. STERN: Objection, form.</p> <p>19 MR. TURKUS: Objection to the form of the</p> <p>20 question.</p> <p>21 A. Can you repeat the question?</p> <p>22 Q. (BY MR. COFFIN) Yes. The first buyer of the</p> <p>23 stock, when it buys the stock and the assets that are</p> <p>24 acquired come over, it comes over on a carryover basis;</p> <p>25 is that right?</p>
<p style="text-align: right;">Page 43</p> <p>1 MR. TURKUS: Second --</p> <p>2 A. Second buyer. Sorry.</p> <p>3 Q. (BY MR. COFFIN) And is there a purpose for</p> <p>4 conducting that transaction?</p> <p>5 MR. TURKUS: Objection to the form of the</p> <p>6 question.</p> <p>7 A. There are -- specifically, you're asking?</p> <p>8 Q. (BY MR. COFFIN) A tax purpose.</p> <p>9 MR. TURKUS: Objection to the form of the</p> <p>10 question.</p> <p>11 A. Why -- why would -- what would be a tax</p> <p>12 motivation for the transaction?</p> <p>13 Q. (BY MR. COFFIN) Right.</p> <p>14 A. For the initial seller to receive capital gain</p> <p>15 treatment on the sale, and the -- the second buyer to</p> <p>16 receive a stepped up tax basis in the assets acquired.</p> <p>17 Q. And then what's the tax motivation for the</p> <p>18 first buyer of the assets of the stock?</p> <p>19 MR. TURKUS: Objection to the form of the</p> <p>20 question.</p> <p>21 A. The tax motivation?</p> <p>22 Q. (BY MR. COFFIN) Yes.</p> <p>23 A. I don't know that there's a tax motivation</p> <p>24 other than an economic motivation for the first buyer to</p> <p>25 be able to receive a profit from the subsequent sale of</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Assuming there's not a qualified stock</p> <p>2 purchase.</p> <p>3 Q. Okay. Was there a qualified stock purchase in</p> <p>4 the transaction at issue?</p> <p>5 A. I -- I don't know.</p> <p>6 Q. And then when that initial buyer of the stock</p> <p>7 sells the assets to the ultimate buyer, isn't there a</p> <p>8 gain that would be recognized based on the sale, the</p> <p>9 asset purchase price?</p> <p>10 MR. TURKUS: Objection to the form of the</p> <p>11 question.</p> <p>12 Q. (BY MR. COFFIN) Over -- over the carryover</p> <p>13 basis of the assets?</p> <p>14 MR. TURKUS: Objection to the form of the</p> <p>15 question.</p> <p>16 MR. STERN: Same objection.</p> <p>17 A. Could you repeat that question, please?</p> <p>18 MR. COFFIN: Read that back for him,</p> <p>19 please.</p> <p>20 (The record was read as requested.)</p> <p>21 MR. TURKUS: Same objection.</p> <p>22 A. If -- if the -- if the assets sold by the first</p> <p>23 buyer were sold for an amount in excess of the adjusted</p> <p>24 tax basis of the assets, then that seller, in this case</p> <p>25 the first buyer, would be subject to gain on those</p>

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<p style="text-align: right;">Page 46</p> <p>1 assets.</p> <p>2 Q. (BY MR. COFFIN) Now, in a Midco transaction, is</p> <p>3 that gain sheltered somehow?</p> <p>4 MR. TURKUS: Object to the form of the</p> <p>5 question.</p> <p>6 MR. STERN: Same objection.</p> <p>7 A. I'm not familiar with how that gain is reported</p> <p>8 or is treated for the first buyer, generally.</p> <p>9 Q. (BY MR. COFFIN) Do you recall when you first</p> <p>10 learned of Midco transactions?</p> <p>11 MR. TURKUS: Objection to the form of the</p> <p>12 question.</p> <p>13 A. I don't recall specifically.</p> <p>14 Q. (BY MR. COFFIN) What about generally?</p> <p>15 A. What year? What --</p> <p>16 Q. Yes.</p> <p>17 A. I don't -- I don't recall.</p> <p>18 Q. Would it have been in 1999?</p> <p>19 A. I -- I don't recall if 1999 was the first time</p> <p>20 I became aware of a Midco transaction.</p> <p>21 Q. Would it have been after 1999?</p> <p>22 A. It could have been before '99.</p> <p>23 Q. It would have been sometime at least by</p> <p>24 August 26 of '99; is that right?</p> <p>25 A. Yeah. At that time or before, that's correct.</p>	<p style="text-align: right;">Page 48</p> <p>1 (The record was read as requested.)</p> <p>2 A. I don't recall if they specifically used the</p> <p>3 term "Midco," no. I don't -- I don't recall a specific</p> <p>4 term being used.</p> <p>5 Q. (BY MR. COFFIN) How about -- did they -- did</p> <p>6 Fortrend or Craig Hoffman ever advise PWC that they</p> <p>7 could facilitate a intermediary transaction?</p> <p>8 MR. TURKUS: Objection to the form.</p> <p>9 Objection, lack of foundation.</p> <p>10 A. How would they -- how would you define an</p> <p>11 "intermediary transaction"?</p> <p>12 Q. (BY MR. COFFIN) An August 2 Midco transaction?</p> <p>13 MR. TURKUS: Same objection.</p> <p>14 A. The -- the representation -- I don't recall any</p> <p>15 specific representation, but Fortrend represented that</p> <p>16 they could facilitate an asset purchase by Midcoast of</p> <p>17 the KPC assets.</p> <p>18 Q. (BY MR. COFFIN) In your discussions with Craig</p> <p>19 Hoffman or anybody else from Fortrend, nobody ever</p> <p>20 represented or used the phrase "Midco transaction"?</p> <p>21 A. They -- they -- I don't recall if they did or</p> <p>22 not. They -- I don't recall.</p> <p>23 Q. Okay. How about -- same question for</p> <p>24 "intermediary transaction"?</p> <p>25 A. I don't recall.</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Do you recall if the firm, PWC, had circulated</p> <p>2 any materials or information about Midco transactions?</p> <p>3 A. I don't recall.</p> <p>4 Q. Do you recall if Mr. McErlean would have</p> <p>5 communicated to you a description of Midco transactions?</p> <p>6 A. It could have been Mr. McErlean or another one</p> <p>7 of the partners in our mergers and acquisitions group.</p> <p>8 Q. Who else would that -- might that be?</p> <p>9 A. David Miller or Ian Shackter.</p> <p>10 Q. Do you know if Mr. Miller had worked with</p> <p>11 Fortrend prior to August 26 of '99?</p> <p>12 A. I don't recall if he had or not.</p> <p>13 Q. Okay. Do you know if Mr. Shackter had worked</p> <p>14 with Fortrend prior to August 26 of 1999?</p> <p>15 A. I don't recall.</p> <p>16 Q. Do you recall if Fortrend represented to PWC</p> <p>17 that it could facilitate a Midco transaction?</p> <p>18 MR. TURKUS: Objection to the form of the</p> <p>19 question. Objection, lack of foundation. To anyone at</p> <p>20 PWC?</p> <p>21 MR. COFFIN: Sure.</p> <p>22 MR. TURKUS: Same objection.</p> <p>23 A. Could you repeat the question again?</p> <p>24 MR. COFFIN: Read that back for me,</p> <p>25 please.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. On the next comment there to the 8/26/99 entry,</p> <p>2 your second one, your second August 26 of '99 entry, it</p> <p>3 says "cc with rr re: capital loss idea."</p> <p>4 Is "cc" conference call? Is that what</p> <p>5 that means?</p> <p>6 A. I believe so.</p> <p>7 Q. And "rr," what would that be?</p> <p>8 A. Richard Robert.</p> <p>9 Q. And then do you recall what the "capital loss</p> <p>10 idea" was?</p> <p>11 MR. TURKUS: Objection to the form of the</p> <p>12 question.</p> <p>13 A. No, I don't recall.</p> <p>14 Q. (BY MR. COFFIN) Okay. Down below September 2,</p> <p>15 1999 entry, the second one, read the "Comments" for me,</p> <p>16 please.</p> <p>17 A. The September 2, '99?</p> <p>18 Q. Yes.</p> <p>19 A. "Bishop deal, cc with drm, rhw, steve corbs,</p> <p>20 bruce snyder re: Cap loss generator."</p> <p>21 Q. Do you know what a "cap loss generator" is</p> <p>22 today?</p> <p>23 MR. TURKUS: Objection to the form of the</p> <p>24 question.</p> <p>25 A. What a cap loss generator -- what this -- what</p>

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<p style="text-align: right;">Page 50</p> <p>1 this specifically means?</p> <p>2 Q. (BY MR. COFFIN) Does it have a definition</p> <p>3 associated with that phrase today?</p> <p>4 MR. TURKUS: Objection to the form of the</p> <p>5 question.</p> <p>6 A. Well, cap -- it certainly implies a transaction</p> <p>7 that would generate a capital loss.</p> <p>8 Q. (BY MR. COFFIN) Okay. But you're not aware of</p> <p>9 any specific phrase or --</p> <p>10 A. I --</p> <p>11 MR. TURKUS: He hasn't finished his</p> <p>12 question.</p> <p>13 Q. (BY MR. COFFIN) You're not aware of any</p> <p>14 specific phrase or term that uses "cap loss generator"?</p> <p>15 MR. TURKUS: Objection to the form of the</p> <p>16 question.</p> <p>17 A. I don't understand the question.</p> <p>18 Q. (BY MR. COFFIN) Okay. Bad question. You're</p> <p>19 not aware of any transaction that can be described as a</p> <p>20 cap loss generator?</p> <p>21 MR. TURKUS: Objection to the form of the</p> <p>22 question.</p> <p>23 A. Any transaction?</p> <p>24 Q. (BY MR. COFFIN) Uh-huh.</p> <p>25 A. I'm -- I'm aware of transactions that could</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Nineteenth?</p> <p>2 Q. Do you see that entry, Mr. Palmisano?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And on the comments I believe it says</p> <p>5 "conference call with attorney for Bank of America, T</p> <p>6 Hardie with Wilcox and Palmisano/tax issues of concern</p> <p>7 to bank." Do you recall being on a conference call with</p> <p>8 Mr. Whitten, with T. Hardie and Mr. Wilcox on there as</p> <p>9 well?</p> <p>10 A. Yes.</p> <p>11 Q. And who is T. Hardie?</p> <p>12 A. I believe he is a tax advisor for Bank of</p> <p>13 America.</p> <p>14 Q. Okay. Do you recall any tax issues or concerns</p> <p>15 of tax issues by Mr. Hardie?</p> <p>16 A. I believe this was in association with</p> <p>17 Midcoast's acquisition of KPC.</p> <p>18 Q. Do you recall a subject matter of that</p> <p>19 conference call at all?</p> <p>20 A. The -- the discussions surrounded the</p> <p>21 acquisition of KPC assets and the carryover or the tax</p> <p>22 basis step-up on the acquisition of those assets.</p> <p>23 Q. Do you remember any specific concern of the</p> <p>24 bank?</p> <p>25 MR. TURKUS: Objection to the form of the</p>
<p style="text-align: right;">Page 51</p> <p>1 generate capital losses.</p> <p>2 Q. But you're not aware of the phrase "cap loss</p> <p>3 generator"?</p> <p>4 MR. TURKUS: Objection to the form of the</p> <p>5 question.</p> <p>6 A. I -- I don't understand the question. Aware of</p> <p>7 the phrase?</p> <p>8 Q. (BY MR. COFFIN) Yeah. Have you ever -- you</p> <p>9 wrote the words down here, so I'm wondering what the --</p> <p>10 MR. TURKUS: Objection. That's not what</p> <p>11 the witness said. He said he might have input the data;</p> <p>12 his executive assistant might have input the data.</p> <p>13 MR. COFFIN: At his instruction.</p> <p>14 MR. TURKUS: That's correct, but you</p> <p>15 mischaracterized his prior testimony.</p> <p>16 A. I don't recall the details of this comment</p> <p>17 associated with this deal.</p> <p>18 Q. (BY MR. COFFIN) Go to PWC 383, please, same</p> <p>19 document, Government Exhibit --</p> <p>20 MR. TURKUS: 159.</p> <p>21 Q. (BY MR. COFFIN) -- 159. Thank you. On</p> <p>22 October 19, 1999 there's an entry by Mr. Whitten. Do</p> <p>23 you see that?</p> <p>24 A. What was the date?</p> <p>25 Q. October 19, 1999.</p>	<p style="text-align: right;">Page 53</p> <p>1 question.</p> <p>2 A. I believe the discussion was -- surrounding</p> <p>3 Bank of America was the -- one of the lenders to</p> <p>4 Midcoast financing the KPC acquisition, and it was to</p> <p>5 better understand the acquisition of those assets and</p> <p>6 the tax issues surrounding that.</p> <p>7 Q. (BY MR. COFFIN) What were the tax issues that</p> <p>8 were identified in that conference call?</p> <p>9 A. The stepped-up basis and other tax issues</p> <p>10 associated with an acquisition of assets.</p> <p>11 Q. Do you recall what Mr. Hardie's specific</p> <p>12 concerns were?</p> <p>13 MR. TURKUS: Objection to the form of the</p> <p>14 question.</p> <p>15 A. I don't recall his specific concerns. I think</p> <p>16 the primary purpose of the call was to talk about issues</p> <p>17 associated with the acquisition.</p> <p>18 Q. (BY MR. COFFIN) Did Mr. Hardie have a concern</p> <p>19 that Midcoast was getting any kind of extraordinary tax</p> <p>20 benefit from the Midco transaction?</p> <p>21 MR. TURKUS: Objection to the form of the</p> <p>22 question.</p> <p>23 MR. STERN: Object to the form.</p> <p>24 A. What do you mean by "extraordinary tax</p> <p>25 benefit"?</p>

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<p style="text-align: right;">Page 54</p> <p>1 Q. (BY MR. COFFIN) You don't know what that means?</p> <p>2 MR. TURKUS: Is that a question?</p> <p>3 MR. COFFIN: Uh-huh.</p> <p>4 MR. TURKUS: Objection to the form of the</p> <p>5 question. He's asking you to explain your prior</p> <p>6 question. You used a term. He's asking you to put it</p> <p>7 in context so he can answer your question.</p> <p>8 Q. (BY MR. COFFIN) Isn't it true that Midcoast</p> <p>9 sheltered some gain on the transaction?</p> <p>10 MR. TURKUS: Objection to the form of the</p> <p>11 question.</p> <p>12 Q. (BY MR. COFFIN) Or got a tax benefit from the</p> <p>13 Midco transaction in this case?</p> <p>14 MR. TURKUS: Objection to the form of the</p> <p>15 question.</p> <p>16 MR. STERN: Object to the form.</p> <p>17 A. Midcoast received tax basis for their cost of</p> <p>18 the acquisition. I believe Mr. Hardie wanted to</p> <p>19 understand, because of the complexity of the deal,</p> <p>20 the -- the tax issues associated with the acquisition.</p> <p>21 Q. (BY MR. COFFIN) Okay. Turn to Government</p> <p>22 Exhibit 161, please. This appears to be, Mr. Palmisano,</p> <p>23 a string of e-mails between Mr. Wilcox, you, Ms. Coffey.</p> <p>24 I think Mr. Whitten received some -- some of these</p> <p>25 e-mails as well; and it looks like the one from you in</p>	<p style="text-align: right;">Page 56</p> <p>1 Mr. Whitten. Do you see that dated January 3 of 2000?</p> <p>2 A. Yes.</p> <p>3 Q. Where Mr. Wilcox advises that he is attaching</p> <p>4 the Midcoast representation letter; and he requests that</p> <p>5 you, Ms. Coffey, review it, provide your comments?</p> <p>6 A. Yes.</p> <p>7 Q. Did you have input then in the Midcoast</p> <p>8 representation letter, as far as the preparation of that</p> <p>9 document?</p> <p>10 MR. TURKUS: When you say "then," do you</p> <p>11 mean at that point in time or at any point in time?</p> <p>12 Q. (BY MR. COFFIN) Then. In January of 2000.</p> <p>13 A. I don't -- I don't recall if I had input on</p> <p>14 that date, but I was -- I had, generally, input on the</p> <p>15 representation letter.</p> <p>16 Q. And what was your responsibility with regard to</p> <p>17 providing input on the representation letter?</p> <p>18 A. Ensuring the facts were complete and accurate</p> <p>19 based on my involvement in the transaction.</p> <p>20 Q. Go back to Government Exhibit 160, please.</p> <p>21 Turn back one document.</p> <p>22 A. (Witness complies.)</p> <p>23 Q. Have you seen this document, Mr. Palmisano,</p> <p>24 prior to Monday of this week?</p> <p>25 A. This specific document draft December 14?</p>
<p style="text-align: right;">Page 55</p> <p>1 the middle dated January 4 of 2000, do you see that, to</p> <p>2 Mr. Wilcox and Ms. Coffey?</p> <p>3 A. Uh-huh.</p> <p>4 MR. TURKUS: You have to say "yes" or</p> <p>5 "no."</p> <p>6 A. Oh, yes. Sorry.</p> <p>7 Q. (BY MR. COFFIN) Subject Re: Midcoast letter?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Do you know if that was -- was that the</p> <p>10 tax opinion letter that was attached to your e-mail?</p> <p>11 A. It's not attached to the Exhibit 161?</p> <p>12 Q. Yes. I don't have it attached to the exhibit.</p> <p>13 A. It appears from the exhibit the title "99</p> <p>14 Midcoast Opinion Letter."</p> <p>15 Q. Uh-huh.</p> <p>16 A. It appears that that was the opinion letter or</p> <p>17 a draft of the opinion letter.</p> <p>18 Q. So, did you have any input in the drafting of</p> <p>19 the tax opinion letter that was issued to Midcoast by</p> <p>20 PWC?</p> <p>21 A. I was involved in the drafting, but the primary</p> <p>22 writers were Catherine Coffey and Gary Wilcox, but I did</p> <p>23 review the letter.</p> <p>24 Q. Okay. And the above e-mail was from Gary</p> <p>25 Wilcox to Ms. Coffey and to you with a cc to</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. Yes.</p> <p>2 A. I -- I don't recall seeing this prior to</p> <p>3 Monday.</p> <p>4 Q. Turn to Government Exhibit 163, please.</p> <p>5 A. (Witness complies.)</p> <p>6 Q. Do you recognize this document, Mr. Palmisano?</p> <p>7 A. 163?</p> <p>8 Q. Yes.</p> <p>9 A. Yes. This appears to be a draft representation</p> <p>10 letter.</p> <p>11 MR. TURKUS: Just to be clear, Mr. Coffin,</p> <p>12 are you asking whether he saw this particular draft or</p> <p>13 one of the drafts?</p> <p>14 Q. (BY MR. COFFIN) Yes. Did you see this</p> <p>15 particular draft, first of all? And if not, did you see</p> <p>16 any of the drafts of Midcoast's representation letter?</p> <p>17 A. I don't recall if I saw this particular draft,</p> <p>18 but I did review drafts of their representation letter.</p> <p>19 Q. Turn to the second page of Government</p> <p>20 Exhibit 163. The second or the first full paragraph</p> <p>21 from the bottom, would you read that out loud, please?</p> <p>22 A. The entire paragraph?</p> <p>23 Q. Yes.</p> <p>24 A. "Midcoast independently pursued the so-called</p> <p>25 'Midco transaction' as a structural alternative. On</p>

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<p style="text-align: right;">Page 58</p> <p>1 August 27, 1999, Midcoast and PriceWaterhouseCoopers, 2 ('PWC') contacted Fortrend International, LLC. Founded 3 in 1986, Fortrend is an investment bank that has acted 4 as a principal in mergers and acquisitions that have 5 ranged in size from \$5 million to in excess of 6 \$1 billion." And there's a parenthesis "Gary-do we need 7 to define 'Midco transaction'? It'd be best to avoid 8 this, but the way we present the phrase above suggests 9 that a definition is necessary." 10 Q. That comment in the last sentence there, do you 11 know who made that comment? 12 A. I don't recall who made that comment. 13 Q. Was it your comment? 14 A. I don't recall whether it was my comment or 15 not. 16 Q. And was it your understanding at the time that 17 Midco transaction was the type of transaction that you 18 described earlier today? 19 A. Could you repeat the question? 20 Q. Was it your understanding at the time that the 21 Midco transaction was the type of transaction you 22 described earlier today? 23 A. Yes. 24 Q. And it says "Midcoast independently pursued the 25 so-called 'Midco transaction' as a structural</p>	<p style="text-align: right;">Page 60</p> <p>1 MR. COFFIN: I like to hear it from his 2 voice. 3 MR. TURKUS: Objection to the form of the 4 question. It's completely inappropriate. 5 A. "On August 30, 1999, Fortrend provided some of 6 its background information to Langley's tax advisors, 7 Ernst & Young ('E&Y'). Over the next several weeks, 8 several conversations took place among Fortrend, 9 Midcoast, PWC and E&Y regarding the viability of the 10 Midco alternative. On September 10, 1999, Langley's 11 representatives faxed to Fortrend a draft letter of 12 intent reflecting a purchase price of \$175 million and a 13 mutual confidentiality agreement." 14 Q. (BY MR. COFFIN) Were you involved in the 15 conversations taking place among Fortrend, Midcoast, PWC 16 and E&Y? 17 MR. TURKUS: Objection to the form of the 18 question. 19 Q. (BY MR. COFFIN) As stated in that paragraph? 20 MR. TURKUS: Objection to the form of the 21 question. 22 A. I was involved in some of the discussions. 23 Q. (BY MR. COFFIN) What was discussed regarding 24 the viability of the Midco alternative? 25 A. I don't recall the specific discussions.</p>
<p style="text-align: right;">Page 59</p> <p>1 alternative." What was it an alternative to? 2 A. Well, in the context of this letter there's a 3 discussion about Midcoast purchasing stock in the prior 4 paragraph. So, I would assume this is an alternative to 5 a stock purchase based on this document. 6 Q. And the sentence beginning with "On August 27, 7 1999, Midcoast and PriceWaterhouseCoopers contacted 8 Fortrend International, LLC," do you recall that being a 9 true statement? 10 A. I don't recall whether the date -- that exact 11 date, but -- but PriceWaterhouseCoopers and Midcoast did 12 contact Fortrend. 13 Q. And then the paragraph beginning at the bottom, 14 would you read that paragraph and on to the next page 15 until the end? 16 MR. TURKUS: To himself or out loud? 17 MR. COFFIN: Out loud, please. 18 MR. TURKUS: Objection to the form of the 19 question. The document speaks for itself. He doesn't 20 have to spend time reading it into the record. We can 21 all read it. It's an exhibit. 22 MR. COFFIN: Well, I want him to read it. 23 MR. TURKUS: Well, he can read it to 24 himself. He doesn't have to read it out loud. What 25 kind of waste of time is this?</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Generally, do you recall? 2 A. Generally, the ability of Midcoast to purchase 3 assets from Fortrend after a previous acquisition was 4 stopped by Fortrend. 5 Q. Turn to Government Exhibit 164, please. 6 A. (Witness complies.) 7 MR. TURKUS: It doesn't appear to be in 8 the witness' binder. 9 THE WITNESS: 164? 10 MR. TURKUS: I'm sorry. It's right in 11 front of the witness. How is that for being helpful? 12 Sorry. 13 Q. (BY MR. COFFIN) Have you seen this document, 14 Government Exhibit 164, prior to Monday, Mr. Palmisano? 15 MR. TURKUS: Again, you mean this specific 16 document? 17 MR. COFFIN: Yes. 18 A. Yeah, I don't recall seeing this specific 19 document. 20 Q. (BY MR. COFFIN) Okay. Do you recall seeing -- 21 do you recognize the handwriting on the document? 22 A. I don't recognize the handwriting. 23 Q. Back in '99, what did PWC tell Midcoast about a 24 Midco transaction? 25 MR. TURKUS: Objection to the form of the</p>

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<p style="text-align: right;">Page 62</p> <p>1 question. Objection, lack of foundation. Do you mean 2 anybody at PWC? 3 MR. COFFIN: Sure. 4 MR. TURKUS: How could the witness know? 5 MR. COFFIN: Well, let's see what he 6 recalls. Can't he just tell me that? 7 MR. TURKUS: He can't say what anyone at 8 PWC -- I mean, the question is just not worded 9 intelligently. 10 MR. COFFIN: Okay, Al. Let him answer the 11 question, please. 12 MR. TURKUS: If you would ask it properly, 13 I wouldn't raise an objection. 14 A. I don't recall specific advice provided by PWC 15 to Midcoast; but generally, we would have discussed 16 how -- how a three-party transaction would work and a 17 company such as Fortrend would independently buy the 18 stock of a company and Midcoast would then buy the 19 assets from Fortrend or an affiliate to ensure that 20 Midcoast would receive cost basis in their acquisition. 21 Q. (BY MR. COFFIN) Was there any discussion -- did 22 you have any discussion with anybody from Midcoast about 23 how Fortrend would offset the gain on the sale of the 24 assets? 25 A. No.</p>	<p style="text-align: right;">Page 64</p> <p>1 A. I don't recall specifically who; but likely 2 Richard Robert, Midcoast counsel, both external and 3 internal and other Midcoast executives. 4 Q. What other executives do you recall would have 5 been involved in those discussions? 6 A. Dan Toucher, who was CEO at the time and Chip 7 Burkowatt, who was chief operating officer and involved 8 in the -- the purchase. 9 Q. Do you have Exhibit 172 in your binder? 10 MR. TURKUS: I don't think so. He has it. 11 MR. COFFIN: Okay. I've got yours. 12 Q. (BY MR. COFFIN) Take a look at 172, please. 13 A. (Witness complies.) 14 Q. I want you to focus on the bottom of the first 15 page of 172 and carryover to the next page, please. It 16 appears to be an e-mail from you to Mr. Robert dated 17 June 9 of 2000. The subject is "KPC 1/1/99-11/8/99 tax 18 returns." And then on the next page, you comment that 19 "Al Lovinger called me yesterday requesting these 20 returns." Who is Al -- is it "Loving" or "Loving"?" 21 A. Lovinger. I believe he was an independent 22 advisor to Midcoast with respect to their FERC case. 23 Q. Do you recall having a telephone conversation 24 with Mr. Lovinger? 25 A. I had several conversations with Mr. Lovinger,</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Did anybody from Midcoast ever ask the question 2 of how Fortrend would offset the gain from the sale of 3 the assets? 4 MR. TURKUS: Ask Mr. Palmisano? 5 MR. COFFIN: Yes. 6 A. I don't recall if they specifically asked, but 7 PriceWaterhouseCoopers or any of the 8 PriceWaterhouseCoopers involved in the deal were not 9 aware of how Fortrend would treat the gain on their tax 10 returns since we weren't their advisors. 11 Q. (BY MR. COFFIN) You weren't whose advisors? 12 A. Fortrend's advisors. 13 Q. Were you involved in any discussions between 14 PWC and Midcoast where you discussed how the IRS might 15 view Fortrend's involvement in the transaction? 16 A. We -- I don't recall specific conversation. 17 However, we did communicate to Midcoast that the 18 transaction had a level of uncertainty, which is why we 19 prepared an opinion letter for the document, the 20 transaction. 21 Q. And what was that uncertainty? Do you recall? 22 A. Because the law is unclear on how to treat 23 these transactions. 24 Q. And that information would have been 25 communicated to who at -- or whom at Midcoast?</p>	<p style="text-align: right;">Page 65</p> <p>1 as I provided him tax information for purposes of his 2 dealings with the FERC. 3 Q. It says "Al would like a return showing the 4 gain on the sale of the ptsp" -- I assume that's 5 partnership -- "interest to MERI" -- is that Midcoast 6 Energy Resources, Inc., MERI? 7 A. Yes. 8 Q. -- "by June 12th to show the FERC." Do you 9 recall why Mr. Lovinger was requesting that partnership 10 return -- I mean, sorry. Is that a tax return he was 11 asking for? 12 A. Yes. 13 Q. Okay. Let me ask you again. Do you recall why 14 Mr. Lovinger was asking for that tax return? 15 MR. TURKUS: Objection, lack of 16 foundation. 17 A. Yes. I believe in terms of -- the step-up in 18 basis affected the -- the rate case and Mr. Lovinger was 19 trying to provide documentation to indicate that 20 Midcoast had received a step-up in basis for the 21 purchase of the assets. 22 Q. (BY MR. COFFIN) How would the information 23 showing the gain on the sale of the partnership interest 24 to MERI establish what Mr. Lovinger was trying to show? 25 MR. TURKUS: Objection to the form of the</p>

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<p style="text-align: right;">Page 66</p> <p>1 question. Objection, lack of foundation. 2 A. The -- the gain on the sale of the partnership 3 interest was sold by the Fortrend affiliate and that 4 would have -- that would have indicated the gain on the 5 sale, which would have substantiated the step-up in 6 basis for his rate case. And I believe the -- there was 7 no prior FERC history of a purchase of a regulated 8 pipeline through -- a purchase of partnership interest. 9 The only guidance that he had, historical guidance was a 10 338H10. 11 Q. (BY MR. COFFIN) What's a approximate 338H10? 12 A. Qualified stock purchase resulting in a stepped 13 up basis. So, the -- I believe Mr. Lovinger described 14 the transaction in general terms; and since there was no 15 prior history of such a transaction before the FERC, 16 they wanted more detail on the transaction to show why 17 there was a step-up. 18 Q. Okay. Go to Government Exhibit 186, please. 19 A. (Witness complies.) 20 Q. Do you recall receiving this e-mail, 21 Mr. Palmisano? 22 A. Yes, I do. 23 Q. Do you recall if you were concerned when you 24 received this e-mail? 25 MR. TURKUS: Objection to the form of the</p>	<p style="text-align: right;">Page 68</p> <p>1 transaction as defined in the notice. 2 Q. (BY MR. COFFIN) That was your opinion? 3 MR. TURKUS: Objection to the form of the 4 question. 5 A. My opinion? 6 Q. (BY MR. COFFIN) Uh-huh. 7 A. My concern -- well, I don't know that I 8 necessarily had concerns because of the e-mail; but my 9 reaction to the e-mail is that the Service did not 10 approve of what they define as intermediary transaction 11 in the notice. 12 Q. Did that give you some concern? 13 MR. TURKUS: Objection to the form of the 14 question. 15 MR. STERN: Objection, form. 16 MR. TURKUS: Concern of what? 17 A. Concern about what? 18 Q. (BY MR. COFFIN) Whether PWC had advised 19 Midcoast on an improper transaction? 20 MR. TURKUS: Objection to the form of the 21 question. 22 A. I believe there was some concern about the 23 transaction we were involved with would be considered a 24 Midco transaction in which case we had formal notice 25 that the IRS didn't approve of similar transactions.</p>
<p style="text-align: right;">Page 67</p> <p>1 question. 2 A. Concerned specifically about -- can you be more 3 specific about -- 4 Q. (BY MR. COFFIN) Well, the IRS had just issued 5 this notice on intermediary transactions, and that's 6 essentially what Fortrend's involvement was, wasn't it, 7 an intermediary transaction? 8 MR. TURKUS: Objection to the form of the 9 question. 10 MR. STERN: Objection to the form. 11 MR. TURKUS: Are you asking whether this 12 transaction was the kind of transaction addressed in the 13 notice? Is that what you're asking? 14 MR. COFFIN: Sure. 15 A. Can you rephrase the question? 16 MR. COFFIN: Ask your counsel to rephrase 17 it. 18 MR. TURKUS: Apparently the question is: 19 Were you concerned because, in your judgment, the 20 Midcoast transaction with Fortrend was effectively or 21 the same as the transaction or substantially similar to 22 the transaction discussed in IRS Notice 2001-16, did you 23 have such a concern? 24 A. My -- my reaction to this e-mail indicated that 25 the Service was not -- did not approve of a -- of a</p>	<p style="text-align: right;">Page 69</p> <p>1 MR. STERN: Lunch is ready whenever y'all 2 want to take a break. 3 MR. COFFIN: This is a good time for 4 lunch. 5 (Recess taken from 12:14 to 12:54.) 6 Q. (BY MR. COFFIN) Turn to Exhibit 187, please. 7 Are you there? 8 A. Yes, sir. 9 Q. Apparently appears to be some e-mail strings 10 between Mr. McErlean, Mr. Whitten. Looks like you were 11 a recipient as well. It appears to -- these e-mails 12 appear to be discussing whether the transaction entered 13 between Midcoast and KPG should be disclosed as a listed 14 transaction. Do you recall having discussions with 15 Robert Robert about that subject? 16 MR. STERN: Objection, form. 17 A. With Richard Robert? 18 Q. (BY MR. COFFIN) Yes, sir. 19 A. I recall having discussions with Richard about 20 the disclosure topic. Not specifically, though. 21 Q. Okay. Do you recall what you said to 22 Mr. Robert about the disclosure topic? 23 A. I believe we concluded that we would not 24 disclose the transaction. 25 Q. Who is "we"?</p>

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<p style="text-align: right;">Page 70</p> <p>1 A. Midcoast or advise them not to disclose. 2 Q. Do you remember what Mr. Robert's comments were 3 in that regard? 4 A. No, I don't recall. 5 Q. Would it have been -- did you speak to him or 6 did somebody else in your firm speak to Mr. Robert about 7 this? 8 A. I don't recall how it was communicated. 9 Q. The e-mail from Mr. McErlean at the top of the 10 first -- top third of Government Exhibit 187, first page 11 from Mr. McErlean to Mr. Whitten, the last sentence 12 Mr. McErlean writes is "Although I haven't been close to 13 Richard in quite some time, I would guess he'll ask if 14 we've considered every conceivable way to prevent these 15 disclosures." Were you aware of the relationship 16 between Mr. McErlean and Richard Robert? 17 A. I -- I know they -- they had met a few times, 18 and Dennis participated in one of the first rounds of 19 meetings regarding this transaction with Richard. 20 Q. And Mr. McErlean comments that "I would guess 21 that he'll ask if we've considered every conceivable way 22 to prevent these disclosures." Do you remember a 23 response like that from Mr. Robert? 24 MR. TURKUS: Objection to the form of the 25 question.</p>	<p style="text-align: right;">Page 72</p> <p>1 A. (Witness complies.) 2 Q. Do you recall the subject matter of that 3 e-mail? 4 A. Yes. 5 Q. Okay. Tell me what the issues were there. 6 A. Midcoast was obligated to pay a project 7 development fee that was an obligation of KPC or one of 8 the affiliates at the time they acquired them. And the 9 question was how to treat that expenditure for tax 10 purposes to capitalize that expenditure or expense it 11 currently. 12 Q. And did you perform research on that issue? 13 A. Yes. 14 Q. And do you recall what you concluded? 15 A. I believe we concluded it needed to be 16 capitalized over the life of the contract replacing the 17 contract terminated. 18 Q. Turn in the same exhibit, turn to PWC 1020 at 19 the bottom right-hand corner. I'm sorry 1057. 20 MR. TURKUS: Yeah, this is a similar 21 exhibit of apparently disconnected e-mails, for the 22 record. 23 Q. (BY MR. COFFIN) The e-mail on the top -- 24 beginning at the top third of the page from you to 25 Mr. Wilcox, do you see that? From you to Mr. Wilcox?</p>
<p style="text-align: right;">Page 71</p> <p>1 A. I don't recall him responding that way. 2 MR. TURKUS: Just for the record, I would 3 note that this exhibit seems to have a bunch of e-mails 4 which are not clearly related to each other. 5 MR. COFFIN: Yeah, I agree. They may or 6 may not be. 7 MR. TURKUS: I just wanted to -- so you 8 know. 9 Q. (BY MR. COFFIN) PWC 1012, which is the second 10 page of 187, at the bottom there's an e-mail there from 11 Mr. Robert to you, Mr. Palmisano, regarding the Midcoast 12 representation letter and PWC opinion. And it looks 13 like Mr. Robert is making comments to the rep letter. 14 Do you see that? 15 A. Yes. 16 Q. Okay. My question is: At that time, July 16 17 of 2001, had -- at that time do you know if PWC, anyone 18 at PWC had advised Mr. Robert of the issuance of Notice 19 2001-16? 20 A. I don't recall we discussed it with them. 21 Q. Take a look at Government Exhibit 188, please. 22 A. (Witness complies.) 23 Q. There is an e-mail in the middle of the page 24 from you, Mr. Palmisano, to Richard Robert. Would you 25 read that e-mail to yourself, please?</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Yes. 2 Q. Dated July 27, 2001, could you read that e-mail 3 for us, please, just the subject matter? 4 A. To myself or out loud? 5 Q. Read it out loud, please. 6 A. "Thanks, Gary. I think we are better off 7 capitalizing the costs with the contract assuming the 8 PDA has a reasonably short line. Expensing currently 9 flags the item in the case of an audit and creates a nol 10 that we would rather not carry back to '98 or '99 for 11 obvious reasons. 12 "Thanks for your reply and hopefully this 13 puts to bed." 14 Q. Okay. Do you recall what those obvious reasons 15 were? 16 A. Well, in 1999 we have the KPC acquisition, 17 which, as we have discussed, has some uncertainty as to 18 where -- how the IRS would treat the transaction. 19 Q. And, then, the -- was there anything in '98 20 that created any concern? 21 A. Not that I'm aware of. 22 Q. Turn to 189, please. 23 A. 199? 24 MR. TURKUS: Eighty-nine. 25 Q. (BY MR. COFFIN) Eighty-nine. Have you seen</p>

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<p style="text-align: right;">Page 74</p> <p>1 this document, Mr. Palmisano, prior to last Monday?</p> <p>2 A. Yes, I have.</p> <p>3 Q. Did you review it sometime February of 2001, do</p> <p>4 you think?</p> <p>5 A. I don't recall reviewing it in 2001.</p> <p>6 Q. When do you recall reviewing it or when is it</p> <p>7 that you recalled that you reviewed it?</p> <p>8 A. I would assume from the documents, since it's</p> <p>9 dated February 20, that I would have read it around that</p> <p>10 time.</p> <p>11 Q. February 20, 2001?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. The second page of the document, did you</p> <p>14 agree with the conclusion reached there that PWC is</p> <p>15 prepared to advise Midcoast that there is an appropriate</p> <p>16 basis for deciding neither to attach a disclosure</p> <p>17 statement to Midcoast's return for its taxable year</p> <p>18 ended December 31, 2001 nor to file a copy of the</p> <p>19 disclosure statement with the IRS in Washington, D.C.?</p> <p>20 MR. TURKUS: Objection to the form of the</p> <p>21 question.</p> <p>22 A. That was the conclusion that our firm reached</p> <p>23 with respect to this issue.</p> <p>24 Q. (BY MR. COFFIN) Did you reach the same</p> <p>25 conclusion yourself?</p>	<p style="text-align: right;">Page 76</p> <p>1 that.</p> <p>2 A. I don't recall the initial contact, but Dennis</p> <p>3 McErlean and I were involved in initial or -- or early</p> <p>4 discussions, but I don't recall who had the specific</p> <p>5 contact with -- with Fortrend within our firm.</p> <p>6 Q. (BY MR. COFFIN) And, then, why -- or how was it</p> <p>7 determined that Fortrend needed to be contacted?</p> <p>8 MR. TURKUS: Objection to the form of the</p> <p>9 question.</p> <p>10 MR. STERN: Objection, form.</p> <p>11 A. How was it determined?</p> <p>12 Q. (BY MR. COFFIN) Yeah. Why did you -- why did</p> <p>13 PWC decide to go out and talk to -- to make an initial</p> <p>14 contact with Fortrend?</p> <p>15 A. There was a desire by Midcoast to receive a</p> <p>16 stepped-up basis in the assets. And by doing so, it</p> <p>17 gave them an ability to increase the amount of</p> <p>18 consideration for the assets.</p> <p>19 Q. Who is "they"?</p> <p>20 A. Midcoast.</p> <p>21 Q. So --</p> <p>22 A. Because -- because of the step-up, there was</p> <p>23 more economic benefit to Midcoast as a buyer. So, they</p> <p>24 were -- it enabled them to -- to pay more for the</p> <p>25 assets.</p>
<p style="text-align: right;">Page 75</p> <p>1 MR. TURKUS: Objection to the form of the</p> <p>2 question.</p> <p>3 A. Did I agree with the conclusion?</p> <p>4 Q. (BY MR. COFFIN) Yeah.</p> <p>5 A. That was -- I agreed with the conclusion at the</p> <p>6 time.</p> <p>7 Q. Do you still agree with the conclusion?</p> <p>8 MR. TURKUS: Objection to the form of the</p> <p>9 question.</p> <p>10 A. I believe since this memo has been written that</p> <p>11 there is further clarity on the disclosure rules that</p> <p>12 may or may not change my opinion on whether this was the</p> <p>13 right answer.</p> <p>14 Q. (BY MR. COFFIN) During the break co-counsel</p> <p>15 advised me that it's still not clear how Fortrend came</p> <p>16 into the picture. Whose idea was it to bring Fortrend</p> <p>17 in to -- to help with this transaction?</p> <p>18 MR. TURKUS: Objection to the form of the</p> <p>19 question.</p> <p>20 A. PriceWaterhouseCoopers initially contacted</p> <p>21 Fortrend about the transaction and introduced Fortrend</p> <p>22 to Midcoast.</p> <p>23 Q. (BY MR. COFFIN) Do you recall who it was that</p> <p>24 contacted Fortrend?</p> <p>25 MR. TURKUS: Objection to -- withdraw</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Okay. So, once you and Mr. McErlean made the</p> <p>2 initial contact with Fortrend, what was the next step?</p> <p>3 MR. TURKUS: Objection to the form of the</p> <p>4 question. That's not what he said.</p> <p>5 MR. COFFIN: Oh, I'm sorry.</p> <p>6 MR. TURKUS: He said he didn't know who</p> <p>7 made the initial contact. He said they had early</p> <p>8 discussions.</p> <p>9 Q. (BY MR. COFFIN) I'm sorry. Well, once you had</p> <p>10 and Mr. McErlean had early discussions with Fortrend,</p> <p>11 what was the next step?</p> <p>12 A. There was a conference call with Fortrend and</p> <p>13 representatives from Midcoast shortly after we contacted</p> <p>14 Fortrend. We made an introduction to Midcoast via</p> <p>15 conference call.</p> <p>16 Q. Who was on the conference call?</p> <p>17 A. I don't -- I don't recall the specific</p> <p>18 individuals involved; but I believe it was myself,</p> <p>19 Dennis McErlean, Richard Robert and either Craig Hoffman</p> <p>20 or Jeff Furman from Fortrend. But I'm not -- I'm not</p> <p>21 positive who represented Fortrend and whether there were</p> <p>22 additional PWC folks on the call as well as Midcoast's</p> <p>23 folks.</p> <p>24 Q. And were there any discussions on that</p> <p>25 conference call as to how Fortrend would be able to</p>

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<p style="text-align: right;">Page 78</p> <p>1 absorb the gain from the purchasing of the stock and 2 sale of the assets to Midcoast Energy? 3 MR. STERN: Objection to form. 4 MR. TURKUS: Objection, asked and 5 answered. 6 A. There were not -- I don't recall any 7 discussions about how -- how the gain would be treated 8 by Fortrend on their tax returns. 9 Q. (BY MR. COFFIN) Did you personally wonder how 10 the gain would be treated on their tax returns? 11 MR. TURKUS: Objection to the form of the 12 question. 13 Q. (BY MR. COFFIN) On Fortrend's tax returns? 14 MR. TURKUS: Same objection. 15 A. Was I -- was I curious how the gain would be 16 treated? 17 Q. (BY MR. COFFIN) Uh-huh. 18 A. I would say, yes, I was curious. 19 Q. Did you ever seek out -- did you talk to 20 anybody about your curiosity, ask anybody in PWC how the 21 gain would be treated? 22 MR. TURKUS: Anybody at PWC or anybody at 23 Fortrend? 24 Q. (BY MR. COFFIN) Anybody at PWC. 25 A. I don't recall specific discussions about that,</p>	<p style="text-align: right;">Page 80</p> <p>1 PriceWaterhouseCoopers. 2 Q. (BY MR. COFFIN) Did anybody at Midcoast ever 3 express curiosity to you as to how the gain would be 4 treated by Fortrend? 5 A. I -- I don't recall specific questions about 6 it, but I believe such discussions could have occurred. 7 Q. And why do you think that such discussions 8 could have occurred? 9 MR. STERN: Objection to the form. 10 MR. TURKUS: Objection to the form of the 11 question. 12 A. I think -- 13 Q. (BY MR. COFFIN) Was Mr. Robert inquisitive in 14 that regard? 15 MR. TURKUS: Objection to the form of the 16 question. 17 A. He may have asked that question. We may have 18 had a discussion. I just don't recall any specific 19 discussions on that specific topic. 20 Q. (BY MR. COFFIN) Take a look at Government 21 Exhibit 190, please. 22 A. (Witness complies.) 23 Q. Have you seen that document before, 24 Mr. Palmisano? 25 A. Yes, I have.</p>
<p style="text-align: right;">Page 79</p> <p>1 but -- 2 Q. Did you have some general discussions? 3 A. -- I'm sure there were some discussions about 4 how the gain would be treated at Fortrend; but we 5 weren't -- were not aware of how it was going to be 6 treated at Fortrend because it was irrelevant to our 7 purchase of the assets, Midcoast's purchase of the 8 assets. 9 Q. So, after that conference call, what would have 10 happened next, as far as pushing the transaction 11 forward? 12 MR. TURKUS: Do you mean the conference 13 call that he described some time ago between people at 14 Fortrend, people at Midcoast and people at PWC? 15 MR. COFFIN: Yes. 16 MR. TURKUS: Objection to the form of the 17 question. 18 A. The -- actually the representation letter 19 actually has very good documentation of the sequence of 20 events. 21 Q. (BY MR. COFFIN) Okay. 22 MR. TURKUS: You need to clarify for 23 Mr. Coffin which representation letter you're talking 24 about. 25 A. The Midcoast representation letter to</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. Who are John Chesser and Amy Campbell? 2 A. They were associates -- tax associates at 3 PriceWaterhouseCoopers at the time this was written. 4 Q. In the Houston office? 5 A. Yes. 6 Q. Do you know why this memo was prepared? 7 A. I had asked John and Amy to prepare this memo 8 to document our conclusion with regard to the tax 9 treatment of the contract cancellation fee. 10 Q. And this is consistent with your -- the 11 position you told me about a few minutes ago, right? 12 A. Yes, sir. 13 Q. Do you know if PWC's position ever changed in 14 that regard with regard to this issue? 15 A. I believe our treatment on the tax return was 16 consistent with this file memo. 17 Q. One thing I didn't see in the representation 18 letter is when exactly did PWC agree to provide a tax 19 opinion letter to Midcoast on this transaction? Do you 20 recall when that was? 21 MR. TURKUS: Objection to the form of the 22 question. 23 A. No, I don't recall specifically when that 24 occurred. 25 Q. (BY MR. COFFIN) Was it at the time that the</p>

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<p style="text-align: right;">Page 82</p> <p>1 engagement letter was entered into, which was Government 2 Exhibit 115, I believe? 3 A. I don't recall when we made the agreement to 4 write the opinion letter. 5 Q. Do you recall discussing the opinion letter in 6 one of your conversations with Mr. Robert? 7 MR. TURKUS: At what time? At any time? 8 MR. COFFIN: At any time. 9 A. It was -- I do recall it was Mr. Robert's 10 desire that we provide a tax opinion with respect to the 11 acquisition. 12 Q. (BY MR. COFFIN) Was that something he requested 13 early on in your discussions of Fortrend? 14 MR. TURKUS: Objection to the form of the 15 question. 16 A. I don't recall at what time. I think it was -- 17 it was likely during the -- during the transaction. 18 Q. (BY MR. COFFIN) What do you mean "during the 19 transaction"? 20 A. Well, at some point between the time they 21 pursued the asset purchase and the time it was closed, 22 but I don't recall specifically when. 23 Q. Turn to Government Exhibit 201, please. 24 A. (Witness complies.) 25 Q. For the most part, Mr. Palmisano, Mr. Wilcox</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. TURKUS: He said that he wasn't sure 2 whether they were or not. The way you've asked this 3 question, you're suggesting to this witness that these 4 notes were prepared in connection with the transaction. 5 MR. COFFIN: I asked him if they were 6 familiar with regard to this transaction. 7 MR. TURKUS: My objection is on the 8 record. 9 MR. COFFIN: Along with a lot of other 10 comments. 11 MR. TURKUS: That's right. It's a 12 question of how you ask the questions. 13 A. Okay. Could you repeat the question again? 14 MR. COFFIN: Would you read that back, 15 please? 16 (The record was read as requested.) 17 MR. TURKUS: I note an additional 18 objection to the prior objection, which is that there 19 are a lot of abbreviations here, and I'm not sure you've 20 explained to the witness what the notes say. 21 A. There -- there's nothing specific to the 22 transaction listed here, but there are some -- some 23 general themes here that -- that are consistent with 24 issues -- tax issues associated with the transaction. 25 Q. (BY MR. COFFIN) Do you recall talking to</p>
<p style="text-align: right;">Page 83</p> <p>1 testified last Monday that these are his notes, but I 2 wanted to go over a few of the topics that he writes 3 about in his notes. 4 MR. STERN: I'm missing my copy. If you 5 will just bear with me. Okay. Sorry. 6 Q. (BY MR. COFFIN) Mr. Palmisano, did you keep 7 notes yourself when working on engagements such as this? 8 A. I may have kept notes or I may have taken 9 notes, but I -- I don't believe I kept those notes or 10 put them in our files. 11 Q. Have you done a search of all your files? 12 A. Yes. 13 Q. Look on the first page of 201. It says 14 "Midco-Considerations." Can you just look over those 15 for a minute? 16 A. (Witness complies.) 17 Q. My question will be, when you're finished: Are 18 any of those matters listed written there familiar to 19 you with regard to this transaction? 20 MR. TURKUS: Objection to the form of the 21 question. The person who made the notes said they were 22 not necessarily prepared in connection with this 23 transaction. That was his sworn testimony. 24 MR. COFFIN: He didn't say that it wasn't, 25 though.</p>	<p style="text-align: right;">Page 85</p> <p>1 Mr. Wilcox about any of these matters? 2 MR. TURKUS: In connection with this 3 transaction? 4 Q. (BY MR. COFFIN) At any time. 5 A. Yes. These are some -- some of these are broad 6 issues associated with the tax treatment of the 7 transaction. 8 Q. I don't understand your answer. 9 MR. TURKUS: Then ask him a question. 10 Q. (BY MR. COFFIN) I asked him: Do you recall 11 talking to Mr. -- 12 MR. COFFIN: Read that back for me. 13 MR. TURKUS: The question or the answer? 14 MR. COFFIN: The question. 15 (The record was read as requested.) 16 Q. (BY MR. COFFIN) Okay. So, you did talk to him? 17 A. So, yeah, these are -- I don't -- I don't know 18 if he wrote these specifically for this transaction, 19 but -- 20 Q. Turn to PWC 1287, please. 21 A. (Witness complies.) 22 Q. At the bottom of 1287 it appears it says 23 "Seller asking for incremental consid-equal to one half 24 the step-up." Do you recall what that may have been? 25 What that was in regard to?</p>

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<p style="text-align: right;">Page 86</p> <p>1 MR. TURKUS: Objection, lack of 2 foundation. 3 A. 1278? 4 Q. (BY MR. COFFIN) 1287. 5 A. 1287. Okay. What was the phrasing? 6 Q. The very bottom. That note on the very bottom. 7 MR. TURKUS: Same objection. 8 A. No, I -- 9 Q. (BY MR. COFFIN) Okay. Turn the page. 10 A. I don't recall what that refers to. 11 Q. Turn the page. At the top of 1288 there's a 12 few notes there. Do you recall what those numbers mean? 13 MR. TURKUS: Are you asking if he knows 14 what Mr. Wilcox meant when he wrote these numbers? Is 15 that what you're asking? 16 MR. COFFIN: No. Let me restate the 17 question. 18 MR. TURKUS: Can you restate the question, 19 please? 20 Q. (BY MR. COFFIN) Do those numbers look familiar 21 to you? 22 MR. TURKUS: Objection to the form of the 23 question. 24 A. It appears that's the -- the profit that K 25 Pipe, their customary and practice to receive a profit</p>	<p style="text-align: right;">Page 88</p> <p>1 any, in connection with this transaction. 2 Q. Did you have any discussions with Mr. Robert or 3 anyone at Midcoast regarding Fortrend's fee structure? 4 A. Yes. 5 Q. And were they aware of Fortrend's fee 6 structure? 7 MR. TURKUS: Objection to the form of the 8 question. 9 MR. STERN: Objection to form. 10 MR. TURKUS: What do you mean by "fee 11 structure"? 12 A. Yeah. Do you mean by the profit on their sale? 13 Q. (BY MR. COFFIN) Yes. 14 A. Yes, we talked about what type of profit they 15 usually shoot for when they sell these assets. 16 Q. Did you ever have a conversation with 17 Mr. Wilcox wherein he used the phrase "loss assets"? 18 MR. TURKUS: In any transaction? 19 Q. (BY MR. COFFIN) In this transaction. 20 A. I don't recall a specific discussion. 21 Q. Can you speculate on what he was referring to 22 in talking about loss assets or writing about loss 23 assets? 24 MR. TURKUS: Objection to the form of the 25 question. Objection, lack of foundation.</p>
<p style="text-align: right;">Page 87</p> <p>1 of 7 percent on -- on these transactions. So, that's -- 2 Q. (BY MR. COFFIN) And do you know what the 15 3 percent is? 4 A. Fifteen percent is a percentage of -- of fee 5 paid by the buyer to the tax advisor. 6 Q. That would have been PWC? 7 A. Yes. 8 Q. Look -- I'm sorry. Same page. There's a 9 couple of brackets there. If you look on the second 10 bracket, Item No. 3, it says "Midco injects loss assets 11 to corp. Corp sells -- Midco takes risk." Are you 12 familiar with the phrase "loss assets"? 13 MR. TURKUS: In connection with this 14 transaction? 15 MR. COFFIN: In any transaction. 16 Q. (BY MR. COFFIN) Let's start with this 17 transaction. 18 MR. TURKUS: Objection to the form of the 19 question. Objection, lack of foundation. 20 A. The question is: What does this note mean in 21 connection with the transaction? 22 Q. (BY MR. COFFIN) Right. Are you familiar with 23 the phrase, term "loss assets" in conjunction with this 24 transaction? 25 A. I'm not aware of what the loss assets were, if</p>	<p style="text-align: right;">Page 89</p> <p>1 MR. STERN: Anybody can speculate. 2 MR. TURKUS: How does that help? 3 MR. STERN: That's a different question. 4 A. I -- I would speculate that he was curious how 5 Fortrend would treat the gain on the asset sale. 6 Q. (BY MR. COFFIN) PWC 1293, please. At the 7 bottom of the page there is a reference there. It says 8 "15-17M." Do you see that about the fourth line up? 9 A. Yes. 10 Q. Okay. Dash PV of tax benefits. Do you know or 11 do those numbers and terms look familiar to you in 12 regard to this transaction? 13 MR. TURKUS: Objection to the form of the 14 question. 15 A. I believe the tax step-up, the difference 16 between the asset purchase price and the adjusted basis 17 of the assets was approximately 120 to \$130 million 18 gross. So, that approximate looks like present value of 19 that increased tax basis through depreciation deductions 20 over the life of the respected properties. 21 Q. (BY MR. COFFIN) Do you recall discussions with 22 Mr. Wilcox or Mr. Robert about the present value of the 23 tax benefits that they would be getting on the 24 depreciation? 25 MR. TURKUS: "That they would be getting"</p>

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<p style="text-align: right;">Page 90</p> <p>1 meaning Mr. Wilcox?</p> <p>2 Q. (BY MR. COFFIN) That Midcoast would be getting?</p> <p>3 A. Yes.</p> <p>4 Q. And do you recall -- was there an amount that</p> <p>5 you guys determined that would be the present value?</p> <p>6 MR. TURKUS: Objection to the form of the</p> <p>7 question. "You guys"?</p> <p>8 Q. (BY MR. COFFIN) Well, the tax advisors and</p> <p>9 Midcoast determined was the present value of the tax</p> <p>10 benefits?</p> <p>11 A. I don't recall who ran the present value model,</p> <p>12 but I recall a model being run to determine what the</p> <p>13 benefit would be.</p> <p>14 Q. Once that amount was determined, do you recall</p> <p>15 how that amount was used in conjunction with this</p> <p>16 transaction?</p> <p>17 MR. TURKUS: Objection to the form of the</p> <p>18 question.</p> <p>19 MR. STERN: Objection, form.</p> <p>20 A. Could you specify what you mean by how it was</p> <p>21 used?</p> <p>22 Q. (BY MR. COFFIN) Sure. Was that number used to</p> <p>23 assist Midcoast in planning or in determining whether to</p> <p>24 enter into the transaction with Fortrend or not?</p> <p>25 MR. TURKUS: Objection to form of the</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. TURKUS: Objection. Lack of</p> <p>2 foundation.</p> <p>3 A. I'm not -- I don't recall specifically how</p> <p>4 Midcoast determined their purchase price or ascertained</p> <p>5 additional consideration because of the purchase. Since</p> <p>6 we were their tax advisors, we would advise them on what</p> <p>7 the benefit of the step-up was in terms of how it was</p> <p>8 allocated to the respective assets. But the financial</p> <p>9 Midcoast employees, Richard Robert and his group, would</p> <p>10 have determined what that meant in terms of deal</p> <p>11 economics.</p> <p>12 Q. (BY MR. COFFIN) Go to the bottom of 1295,</p> <p>13 please.</p> <p>14 A. (Witness complies.)</p> <p>15 Q. Now, at the bottom I think it says "I am not</p> <p>16 comfort talking fee without disclosure to client.</p> <p>17 directing Fortrend to pay us a portion." Do you recall</p> <p>18 any of those matters in relation to the transaction?</p> <p>19 MR. TURKUS: Objection to the form of the</p> <p>20 question. Objection, lack of foundation.</p> <p>21 A. Well, the final agreement engagement letter</p> <p>22 included that Midcoast would direct Fortrend to pay out</p> <p>23 of Midcoast's consideration on the asset purchase. That</p> <p>24 would seem that relates to these notes in some fashion.</p> <p>25 Q. (BY MR. COFFIN) Go to PWC P1299, please. At</p>
<p style="text-align: right;">Page 91</p> <p>1 question. Objection, lack of foundation.</p> <p>2 MR. STERN: Same objection.</p> <p>3 A. The benefit of the step-up enabled Midcoast to</p> <p>4 increase the amount of consideration for the assets.</p> <p>5 Q. (BY MR. COFFIN) And what did the present value</p> <p>6 of the tax benefit, how did that help in that equation,</p> <p>7 if at all?</p> <p>8 MR. TURKUS: Objection to the form of the</p> <p>9 question.</p> <p>10 A. The increased tax basis would give Midcoast</p> <p>11 additional corporate and state income tax deductions</p> <p>12 after the transaction in excess of a carryover basis.</p> <p>13 Q. (BY MR. COFFIN) I'm still a little confused.</p> <p>14 It might be my questioning. I'm sure Mr. Turkus would</p> <p>15 say yes, it is.</p> <p>16 Why would -- I understand you're</p> <p>17 calculating the tax benefit into the future, then you</p> <p>18 bring it back to present value. So, the present value,</p> <p>19 how was that number used, if you know, by Midcoast in</p> <p>20 its planning for this transaction?</p> <p>21 A. In terms of --</p> <p>22 Q. Was it compared against something else or was</p> <p>23 it -- was that the figure that was used to add to the</p> <p>24 purchase price that could -- the increased purchase</p> <p>25 price you mentioned earlier?</p>	<p style="text-align: right;">Page 93</p> <p>1 the bottom where it says "BOSS," does that word have any</p> <p>2 meaning to you today?</p> <p>3 A. BOSS?</p> <p>4 Q. With regard to a tax transaction?</p> <p>5 MR. TURKUS: In connection with this</p> <p>6 transaction?</p> <p>7 Q. (BY MR. COFFIN) No. Just any tax. A tax</p> <p>8 transaction.</p> <p>9 A. I believe it is -- it's a reference to a tax</p> <p>10 shelter transaction.</p> <p>11 Q. Was there -- do you recall any discussions with</p> <p>12 PWC or Midcoast about a BOSS transaction back in '99?</p> <p>13 A. BOSS transaction. I don't -- I don't recall</p> <p>14 specific discussions, but it was discussed as a -- it</p> <p>15 was discussed at some point with Richard as a tax</p> <p>16 planning strategy.</p> <p>17 Q. Was Fortrend -- do you know if Fortrend, were</p> <p>18 they involved in BOSS transactions?</p> <p>19 MR. TURKUS: Objection, lack of</p> <p>20 foundation.</p> <p>21 A. I'm not aware of their involvement in BOSS</p> <p>22 transactions.</p> <p>23 Q. (BY MR. COFFIN) Was there much discussion with</p> <p>24 Mr. Robert about a BOSS transaction?</p> <p>25 A. There -- there were discussions with Mr. Robert</p>

24 (Pages 90 to 93)

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<p style="text-align: right;">Page 94</p> <p>1 about BOSS transactions. 2 Q. Do you recall what was discussed? 3 A. Not -- not specifically. 4 Q. What about just generally? 5 A. I do recall conversations that I -- that 6 PriceWaterhouseCoopers had with Richard about BOSS as a 7 general strategy. 8 Q. Who was involved from PriceWaterhouseCoopers? 9 A. Myself and Dennis McErlean, possibly Bob 10 Whitten. 11 Q. Was a BOSS transaction entered into by 12 Midcoast? 13 A. Not that I'm aware of. 14 MR. COFFIN: All right. I've got to have 15 a break. I'm sorry. 16 MR. TURKUS: That's okay. 17 (Recess taken from 1:45 to 1:52.) 18 Q. (BY MR. COFFIN) Go to 1304, please, PWC 1304. 19 There's an entry there, I think "9/15 Tom P" next to it, 20 which I think would be you, and it says "Dennis said 21 Fortrend pays us." Did you discuss with Mr. Wilcox or 22 Mr. McErlean about who should pay the fee -- 23 MR. STERN: Objection, form. 24 Q. (BY MR. COFFIN) -- to PWC? 25 A. There were discussions about how to -- how to</p>	<p style="text-align: right;">Page 96</p> <p>1 MR. TURKUS: Object to the form of the 2 question. Discussions involving this witness? 3 MR. COFFIN: Sure. 4 A. I don't recall specific discussions about 5 Circular 230. 6 Q. (BY MR. COFFIN) Okay. Any general discussions 7 about Circular 230? 8 A. I don't recall any general discussions that I 9 was involved with. 10 Q. Okay. Back on 1306 at the bottom. You read 11 part of that. Down at the bottom it says "separate 12 letter with Fortrend." 13 Do you know what that is in regard to? 14 MR. TURKUS: Objection, lack of 15 foundation. 16 A. No, I don't recall. 17 Q. (BY MR. COFFIN) Go to 1308. There is a note 18 there with "Dennis M" with the triangle around it. Do 19 you see that? Below that where it says "Nature of 20 concern," would you read that to yourself, please? 21 A. The triangle? 22 Q. Well, I think it's a rectangle, isn't it? Four 23 sides? 1308. 24 A. Oh. 25 MR. TURKUS: You said triangle at first.</p>
<p style="text-align: right;">Page 95</p> <p>1 arrange the fee, PWC's fee for Midcoast. 2 Q. Okay. 3 A. And whether or not it should be paid by 4 Midcoast or paid at closing. 5 Q. Was it determined that it would be paid at 6 closing from the seller's proceeds? 7 A. Paid at closing from the consideration by the 8 buyer, yeah. 9 Q. Do you know why it was instructed that Midcoast 10 would pay the fee directly to PWC? 11 A. I don't recall why we arranged the way we did. 12 I believe it was an issue of convenience. 13 Q. Go to 1306. If you will just read the bottom 14 there where it says "9/17 Bob Whitten," go to the next 15 page, about the top third, to the next entry. 16 A. (Witness complies.) 17 Q. There seems to be some reference there to 18 Circular 230. Are you familiar with Circular 230? 19 MR. TURKUS: Is he familiar today with it 20 or was he familiar in 1999? 21 MR. COFFIN: Today. 22 A. I know generally what Circular 230 is, yes. 23 Q. (BY MR. COFFIN) Okay. Were there discussions 24 about Circular 230 in 1999 in relation to this 25 transaction?</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. COFFIN: Oh, I'm sorry. 2 MR. TURKUS: It was a trick question. 3 MR. COFFIN: I'm sorry. I'm surprised you 4 didn't object. 5 MR. TURKUS: I knew what you meant. I 6 figured Tom would, too; but I was wrong. 7 Q. (BY MR. COFFIN) Have you read those five lines 8 there? 9 A. They're not very legible. 10 Q. No, they're not. Have you looked at that? 11 A. Yes. 12 Q. Okay. Under the rectangle it says "Nature of 13 concern," and I think it says "Richard not tell BD," 14 which I think is board, "that they'll pay us 900K." 15 Do you remember if there was an issue as 16 to whether Mr. Robert was or was not going to tell the 17 board about PriceWaterhouseCoopers' fees on the 18 transaction? 19 A. I don't recall any issue along those lines. 20 Q. Below that "Tom" with a square around it, 21 appears to say "Richard reconsid how to pull out." Do 22 you remember if you had any discussions with Mr. Robert 23 or Mr. Wilcox about pulling out? 24 A. Not specific discussions; but with any 25 acquisition, there was a potential that could have died</p>

25 (Pages 94 to 97)

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<p style="text-align: right;">Page 98</p> <p>1 at several points in time during the negotiations. 2 Q. Go to 1312, please. 3 A. (Witness complies.) 4 Q. There is an entry at the top that says 9/22 5 appears to say "Jeff Furman, Craig H., Tom P. and Dennis 6 M." On the left of those entries, and there's a bracket 7 there, it looks like it says charge for ord, what I 8 would consider to be ordinary -- "charge 7 percent for 9 ord and 5 percent for capital." Do you see that? 10 A. Yes. 11 Q. Do you recall if Fortrend had two different 12 fees for -- depending on what type of gains occurred on 13 the transaction? 14 MR. TURKUS: Objection to the form of the 15 question. Objection, lack of foundation. 16 MR. STERN: Objection to the form. 17 A. Can you repeat the question again? Sorry. I 18 was reading while you were asking it. I apologize. 19 MR. COFFIN: That's all right. Read that 20 back, please. 21 (The record was read as requested.) 22 MR. TURKUS: Same objection. 23 A. The -- the selling price was, I believe, a flat 24 fee. So, it didn't factor into whether it would be 25 ordinary gain or capital gain to portray on the sale.</p>	<p style="text-align: right;">Page 100</p> <p>1 A. The -- I'm sorry. Can you repeat the question 2 again? I lost my train of thought. 3 MR. COFFIN: Okay. Read it back for me, 4 if you would. 5 (The record was read as requested.) 6 A. I don't recall the specific discussion with 7 Gary about a fee increase. 8 Q. (BY MR. COFFIN) Okay. 9 A. On the 30th. 10 Q. Okay. Do your view of these notes, does 11 anything come to mind as to an issue with regard to the 12 computation of the fee? 13 MR. TURKUS: Objection to the form of the 14 question. 15 A. That -- the PriceWaterhouseCoopers' fee paid by 16 Midcoast? 17 Q. (BY MR. COFFIN) Either that fee or the fee that 18 was paid to -- well, that's what it says. You tell me 19 if you know what that fee relates to where it says at 20 the top "step-up and related fee include fee." 21 MR. TURKUS: Objection, lack of 22 foundation. He didn't write these notes. 23 A. Yeah. 24 MR. STERN: Same objection. 25 A. The -- I believe generally -- and I don't</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. (BY MR. COFFIN) Is that a "yes" or "no"? 2 A. "Yes" or "no" to? 3 Q. Wasn't my question do you recall? 4 MR. TURKUS: Question was: Do you recall 5 whether they had a different fee structure depending on 6 whether it was ordinary gains or capital gains. 7 A. I don't recall the graduated structure that -- 8 Q. (BY MR. COFFIN) Go to P1320, please. 9 A. (Witness complies.) 10 Q. In the middle of the page there's an entry 11 "9/30 Tom P." If you will read to yourself that to the 12 bottom of the page, please. 13 A. (Witness complies.) 14 Q. Have you finished? 15 A. Yes. 16 Q. Was there an issue with regard to how the fee 17 would be calculated that was discussed with -- that you 18 discussed with Mr. Wilcox on September 30? 19 MR. TURKUS: Objection to the form of the 20 question. Objection, lack of foundation. 21 MR. STERN: Same objection. 22 A. When -- when you refer to "fee," what 23 specifically are you talking about? 24 PriceWaterhouseCoopers' fee from Midcoast? 25 Q. (BY MR. COFFIN) Yes, sir.</p>	<p style="text-align: right;">Page 101</p> <p>1 recall the discussions on September 30, but with respect 2 to additional consideration in the deal would cause 3 additional purchase price in step-up which would impact 4 the amount of profit that Fortrend receives on the sale 5 of the assets. 6 Q. (BY MR. COFFIN) Okay. The \$6 million -- is 7 that 6 million? Is that what you take it in the notes? 8 MR. TURKUS: Objection to the form of the 9 question. 10 A. What I was referring to? 11 Q. (BY MR. COFFIN) Yeah. If 6 million -- the 12 second line says "If 6 million step-up additional five 13 percent for \$6 million"? 14 A. Yes. That's what I'm referring to as the notes 15 here. 16 Q. Does the 6 million relate to the Butcher 17 Interest? 18 MR. TURKUS: Objection to the form of the 19 question. Objection, lack of foundation. 20 MR. STERN: Same objection. 21 A. I don't recall what this 6 million refers to. 22 Q. (BY MR. COFFIN) And the notes at the bottom 23 where, it says "9/30 Tom P.," very bottom of the page, 24 P1320, I believe it says "agree with GBW not made clear 25 on Fort," Fortrend's side. "Only makes sense re</p>

26 (Pages 98 to 101)

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<p>1 percentage of gains sheltered."</p> <p>2 Do those words have any meaning to you as</p> <p>3 related to the transaction in '99?</p> <p>4 A. Well, the customary practice, I believe, of</p> <p>5 Fortrend was to receive a profit on their sale of a</p> <p>6 percentage of the step-up in the tax basis to the</p> <p>7 ultimate asset buyer. So, with additional consideration</p> <p>8 involved, that would mean additional step-up and</p> <p>9 additional purchase price.</p> <p>10 Q. But it says -- what about the words "percentage</p> <p>11 of gain sheltered"? Does that mean anything to you?</p> <p>12 MR. TURKUS: Are you asking him if he</p> <p>13 knows what Mr. Wilcox meant when he wrote that or are</p> <p>14 you asking him something different?</p> <p>15 MR. COFFIN: No, I'm asking him something</p> <p>16 different.</p> <p>17 MR. TURKUS: Okay. Could you explain the</p> <p>18 question then?</p> <p>19 Q. (BY MR. COFFIN) Reading those words written in</p> <p>20 the notes that appear to result from conversation with</p> <p>21 you on 9/30 by Mr. Wilcox, do -- does the words or do</p> <p>22 the words "gain sheltered" mean anything to you today as</p> <p>23 related to that transaction in 1999?</p> <p>24 MR. TURKUS: Objection to the form of the</p> <p>25 question.</p>	<p>1 the fee or negotiating the fee or any -- any sort of</p> <p>2 back and forth with Fortrend with respect to the amount</p> <p>3 of the purchase price of the assets.</p> <p>4 Q. (BY MR. COFFIN) Did Mr. Robert talk to you</p> <p>5 about reducing PWC's fee on this transaction?</p> <p>6 A. I don't recall any specific negotiations on the</p> <p>7 fee with respect to PWC's fee or whether he asked us to</p> <p>8 lower the fee.</p> <p>9 Q. Now, you chuckled earlier about Mr. Robert and</p> <p>10 wanting him -- about beating down fees in general. Can</p> <p>11 you comment on that?</p> <p>12 MR. TURKUS: Objection to the form of the</p> <p>13 question.</p> <p>14 A. I think it's a -- the responsibility of any</p> <p>15 chief financial officer at a company to be mindful of</p> <p>16 the amount of professional fees incurred. And he was</p> <p>17 mindful of professional fees that were incurred on</p> <p>18 behalf of his company.</p> <p>19 Q. (BY MR. COFFIN) When I took his deposition</p> <p>20 several weeks ago he commented on the initial engagement</p> <p>21 letter, Exhibit No. 5, that the 65 percent -- 65 percent</p> <p>22 of the hourly fees was something he negotiated</p> <p>23 specifically. And he seemed to be proud of the fact</p> <p>24 that he did that. Is that typical of something</p> <p>25 Mr. Robert would try to do at PWC?</p>
Page 103	Page 105
<p>1 A. I believe he is referring to the percentage of</p> <p>2 the tax step-up, which was a basis for the profit on the</p> <p>3 asset sale.</p> <p>4 Q. (BY MR. COFFIN) 1322, please, P1322. At the</p> <p>5 top "10/4 Tom P." It says "Richard Robert-why not beat</p> <p>6 down fee?" And then it says "not outraged-just ask if</p> <p>7 how normally done." Do you recall having any</p> <p>8 conversations with Mr. Robert about -- about beating</p> <p>9 down any fees?</p> <p>10 MR. TURKUS: Objection to the form of the</p> <p>11 question.</p> <p>12 A. With respect to this transaction or all of the</p> <p>13 work we perform?</p> <p>14 Q. (BY MR. COFFIN) This one specifically.</p> <p>15 A. Okay. I recall discussing the methodology used</p> <p>16 by Fortrend to determine the amount of a purchase price</p> <p>17 when they sell the assets.</p> <p>18 Q. Was Mr. Robert proposing that you negotiate</p> <p>19 with Fortrend to reduce their fee?</p> <p>20 MR. TURKUS: Objection to the form of the</p> <p>21 question.</p> <p>22 A. I don't recall specific discussions about that.</p> <p>23 Q. (BY MR. COFFIN) What about just generally?</p> <p>24 MR. TURKUS: Same objection.</p> <p>25 A. I don't recall the specific discussions about</p>	<p>1 MR. TURKUS: Objection to the form of the</p> <p>2 question. Objection, lack of foundation.</p> <p>3 MR. STERN: Same objection.</p> <p>4 A. I -- I think it's typical for our liaisons with</p> <p>5 clients to be prudent about the amount of fees they</p> <p>6 incur and negotiate the best fee for their company, and</p> <p>7 Richard was no exception.</p> <p>8 Q. (BY MR. COFFIN) Go to 1326, please. There's an</p> <p>9 entry there "10/16 T Hardie." Now, we talked about Tye</p> <p>10 Hardie earlier as a representative of Bank of America, I</p> <p>11 believe. Could you read through that list there or</p> <p>12 those notes and tell me if you recall that those</p> <p>13 issues -- those matters were concerns of T. Hardie?</p> <p>14 MR. TURKUS: In connection with these</p> <p>15 notes relating to apparently 10/16 or just general? I</p> <p>16 point out Mr. Palmisano's name is not here.</p> <p>17 MR. COFFIN: Yes.</p> <p>18 MR. TURKUS: So you're asking just</p> <p>19 generally?</p> <p>20 MR. COFFIN: Just generally.</p> <p>21 MR. STERN: Are you asking if the heart</p> <p>22 relates to T. Hardie?</p> <p>23 MR. TURKUS: Off the record.</p> <p>24 (Discussion off the record)</p> <p>25 A. Could you repeat the question again?</p>

27 (Pages 102 to 105)

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<p style="text-align: right;">Page 106</p> <p>1 MR. COFFIN: Read it back, please. 2 (The record was read as requested.) 3 Q. (BY MR. COFFIN) Based on your discussions with 4 him. 5 A. I don't recall the -- these specific issues 6 discussed with T. Hardie, but we did discuss the 7 transaction with T. Hardie with respect to his -- his 8 client, the lender on the transaction. 9 Q. Who is "we"? 10 A. PriceWaterhouseCoopers. 11 Q. Go to 1369, please. Do you see the calculation 12 there underneath that says "Tom's cell phone," I assume 13 that's your cell phone number or was at some time? 14 A. Yes, it was. 15 Q. Does this calculation mean anything to you? 16 A. It looks like a calculation of the profit on 17 the sale of the assets that Fortrend received. 18 Q. Where is that number? 19 A. 5 percent of \$128 million. 20 Q. Okay. And, then, do you know what the -- the 21 15 percent there, is that what PWC was to be paid? 22 A. I don't know if that's the exact number, but it 23 looks like a -- an estimate of what the number would be. 24 Q. So, the \$958,735 is what PWC would have been 25 paid?</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Okay. What about below that, Universal Merit 2 Securities, Inc.? 3 A. No. 4 MR. COFFIN: Okay. One last break, 5 hopefully. Are you going to have any questions, 6 Mr. Stern? 7 MR. STERN: (No response.) 8 (Recess taken from 2:22 to 2:27.) 9 Q. (BY MR. COFFIN) Mr. Palmisano, I think you 10 testified earlier, and if I misstate your testimony, 11 please correct me, that you had initial discussions 12 regarding using Fortrend or bringing in Fortrend with 13 other people at PWC; is that right? And then you 14 brought Midcoast into the mix as far as having those 15 discussions about Fortrend; is that correct? 16 A. That's correct. 17 Q. Okay. At what point in time did PWC start 18 researching whether a Midcoast alternative was a 19 transaction that was viable? 20 MR. TURKUS: Objection, lack of 21 foundation. 22 A. Could you give an example of -- in terms of the 23 research? 24 Q. (BY MR. COFFIN) Okay. Researching the legal 25 authorities, when was that conducted by PWC, if at all?</p>
<p style="text-align: right;">Page 107</p> <p>1 A. It appears to be an estimate. 2 Q. Okay. Do you guys have 244 in your books, 3 which would be the last exhibit? 4 A. 244? 5 Q. Yes. 6 A. Yes, I have it. 7 MR. COFFIN: Do you have that one, Al? 8 MR. TURKUS: I don't think so. The last 9 one we have is 204. 10 MR. STERN: 254? 11 MR. COFFIN: 244. I have an extra one, if 12 you need it. Here you go. 13 MR. STERN: I've got it. 14 Q. (BY MR. COFFIN) Mr. Palmisano, your name is 15 nowhere on this memorandum, but I wanted to ask you if 16 you'll look on -- in the body of that memorandum refers 17 to SCALP, S-C-A-L-P, Signal Capital Associates, LP. Are 18 you familiar with that entity? 19 A. I don't recall that entity in the transaction. 20 Q. Okay. Down below there's a reference there 21 45 percent of SCALP'S holdings in Petro Holdings LP, 22 Inc. Do you see that? 23 A. Yes. 24 Q. Are you familiar with that entity? 25 A. No, I'm not familiar with it.</p>	<p style="text-align: right;">Page 109</p> <p>1 MR. TURKUS: Objection, lack of 2 foundation. 3 A. I don't recall specifically when we began the 4 research specifically on our transaction, but the -- I 5 don't recall specific research done before the 6 transaction with respect to the three-party sale that 7 was proposed at the time, but the -- I know some 8 technical research transpired October through December 9 with respect to this specific deal and the tax issues 10 associated with it as evidenced by the December 14 memo 11 prepared by Gary Wilcox. 12 Q. (BY MR. COFFIN) Do you know when that research 13 then would have been done? Sometime before December 14, 14 1999? 15 A. I would assume that to be the case, but I 16 wasn't -- I wasn't heavily involved in the research 17 effort. I was involved in the transaction. 18 Q. Do you know who was doing most of the 19 researching of the legal authorities? 20 A. I don't know specifically, but the individuals 21 that would have been heavily involved would have been 22 Gary Wilcox and Catherine Coffey. 23 Q. So, do you know if anybody in the Houston 24 office of PWC would have done any of the research that 25 resulted in this memo draft of December 14, 1999,</p>

28 (Pages 106 to 109)

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Witness: Thomas J. Palmisano

Page 110	Page 112
1 Government Exhibit 160?	1 CHANGES AND SIGNATURE
2 A. I don't -- I don't recall anyone in the Houston	2 WITNESS NAME: Thomas J. Palmisano
3 office working on that technical memo.	3 DATE OF DEPOSITION: February 28, 2007
4 Q. Okay. Do you recall when the results of the	4 PAGE LINE CHANGE REASON
5 research would have been communicated -- or were the	5
6 results of the research communicated to Midcoast?	6
7 A. I don't know necessarily the results of the	7
8 research, but the -- at the time of closing -- I don't	8
9 recall the specific communication, but I believe there	9
10 was an understanding with PriceWaterhouseCoopers and	10
11 Midcoast that PriceWaterhouseCoopers had enough comfort	11
12 with the transaction that they would issue a	12
13 more-likely-than-not opinion on the transaction.	13
14 Q. Did you attend the closing of this transaction?	14
15 A. No, I did not.	15
16 Q. Who from PriceWaterhouseCoopers was there?	16
17 A. Gary Wilcox, I believe, was there. I don't	17
18 believe any other PriceWaterhouseCoopers individuals	18
19 were there.	19
20 MR. COFFIN: Pass the witness.	20
21 MR. STERN: I don't have anything at this	21
22 time.	22
23 MR. TURKUS: Mr. Palmisano will read and	23
24 sign this deposition transcript.	24
25 MR. COFFIN: Thanks for coming in.	25
Page 111	Page 113
1 (Proceedings concluded at 2:32 p.m.)	1 I, THOMAS J. PALMISANO, have read the foregoing
2	2 deposition and hereby affix my signature that same is
3	3 true and correct, except as noted above.
4	4
5	5
6	6 THOMAS J. PALMISANO
7	7 THE STATE OF _____)
8	8 COUNTY OF _____)
9	9
10	10 Before me, _____, on this day
11	11 personally appeared THOMAS J. PALMISANO, known to me or
12	12 proved to me on the oath of _____ or through
13	13 _____ (description of identity card
14	14 or other document) to be the person whose name is
15	15 subscribed to the foregoing instrument and acknowledged
16	16 to me that he/she executed the same for the purpose and
17	17 consideration therein expressed.
18	18 Given under my hand and seal of office on this _____
19	19 day of _____, _____.
20	20
21	21
22	22 NOTARY PUBLIC IN AND FOR
23	23 THE STATE OF _____
24	24 My Commission Expires: _____
25	25

29 (Pages 110 to 113)

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1 STATE OF TEXAS
2 COUNTY OF HARRIS
3
4 REPORTER'S CERTIFICATE
5 ORAL DEPOSITION OF THOMAS J. PALMISANO
6 February 22, 2007
7

8 I, the undersigned Certified Shorthand Reporter in
9 and for the State of Texas, certify that the facts
10 stated in the foregoing pages are true and correct.

11 I further certify that I am neither attorney or
12 counsel for, related to, nor employed by any parties to
13 the action in which this testimony is taken and,
14 further, that I am not a relative or employee of any
15 counsel employed by the parties hereto or financially
16 interested in the action.

17 SUBSCRIBED AND SWORN TO under my hand and seal of
18 office on this the _____ day of _____,
19 _____.

20 
21 Kelly Hanna, CSR, RPR, CRR, CMRS
22 Texas CSR 1654
23 Expiration: 12/31/2007
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